

to be critical of the rule, to suggest that the rule should not be adopted, or to suggest that a change should be made to the rule. Under the direct final rule process, FMCSA does not consider the following types of comments to be adverse:

(1) Comments recommending another rule change, unless the commenter states that the direct final rule will be ineffective without the change;

(2) Comments outside the scope of the rule and comments suggesting that the rule's policy or requirements should or should not be extended to other Agency programs outside the scope of the rule;

(3) Comments in support of the rule; or

(4) Comments requesting clarification.

(c) *Confirmation of effective date.* FMCSA will publish a confirmation rule document in the FEDERAL REGISTER, if it has not received an adverse comment by the date specified in the direct final rule. The confirmation rule document tells the public the effective date of the rule.

(d) *Withdrawal of a direct final rule.* (1) If FMCSA receives an adverse comment within the comment period, it will either publish a document withdrawing the direct final rule before it becomes effective and may issue an NPRM, or proceed by any other means permitted under the Administrative Procedure Act, consistent with procedures at 49 CFR 5.13(1).

(2) If FMCSA withdraws a direct final rule because of an adverse comment, the Agency may issue a notice of proposed rulemaking if it decides to pursue the rulemaking.

[75 FR 29916, May 28, 2010, as amended at 84 FR 71733, Dec. 27, 2019]

APPENDIX A TO PART 389

AFFIDAVIT IN SUPPORT OF REQUEST FOR CONFIDENTIALITY

I, _____, pursuant to the provisions of 49 CFR part 389, section 389.9, state as follows:

(1) I am [insert official's name, title] and I am authorized by [insert name of entity] to execute this Affidavit on its behalf;

(2) I certify that the information contained in the document(s) attached to this Affidavit is submitted voluntarily, with the claim that

the information is entitled to confidential treatment under 5 U.S.C. 552(b)(4);

(3) I certify that the information contained in the documents attached to this Affidavit is of a type not customarily disclosed to the general public by [insert name of entity];

(4) I certify that, to the best of my knowledge, information and belief, the information contained in the documents attached to this Affidavit, for which confidential treatment is claimed, has never been released to the general public or been made available to any unauthorized person outside [insert name of entity];

(5) I certify that this information satisfies the substantive criteria set forth in the notice published in the FEDERAL REGISTER on _____ [insert date of rule-specific publication in month/day/year format] under FMCSA Docket Number [insert docket number].

(6) I make no representations beyond those made in this Affidavit, and, in particular, I make no representations as to whether this information may become available outside [insert name of entity] due to unauthorized or inadvertent disclosure; and

(7) I certify under penalties of perjury that the foregoing statements are true and correct.

Executed on this ____ day of ____, ____.

(signature of official)

[80 FR 32865, June 10, 2015]

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

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- 390.403 Lease and interchange requirements.

AUTHORITY: 49 U.S.C. 504, 508, 31132, 31133, 31134, 31136, 31137, 31144, 31149, 31151, 31502; sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; secs. 212 and 217, Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 229, Pub. L. 106–159 (as added and transferred by sec. 4115 and amended by secs. 4130–4132, Pub. L. 109–59, 119 Stat. 1144, 1726, 1743; sec. 4136, Pub. L. 109–59, 119 Stat. 1144, 1745; secs. 32101(d) and 32934, Pub. L. 112–141, 126 Stat. 405, 778, 830; sec. 2,

Pub. L. 113-125, 128 Stat. 1388; secs. 5403, 5518, and 5524, Pub. L. 114-94, 129 Stat. 1312, 1548, 1558, 1560; sec. 2, Pub. L. 115-105, 131 Stat. 2263; and 49 CFR 1.81, 1.81a, 1.87.

SOURCE: 53 FR 18052, May 19, 1988, unless otherwise noted.

Subpart A—General Applicability and Definitions

§ 390.1 Purpose.

This part establishes general applicability, definitions, general requirements and information as they pertain to persons subject to this chapter.

§ 390.3 General applicability.

(a) The rules in subchapter B of this chapter are applicable to all employers, employees, and commercial motor vehicles that transport property or passengers in interstate commerce.

(b) The rules in part 383 of this chapter, Commercial Driver's License Standards; Requirements and Penalties, are applicable to every person who operates a commercial motor vehicle, as defined in § 383.5 of this subchapter, in interstate or intrastate commerce and to all employers of such persons.

(c) The rules in part 387 of this chapter, Minimum Levels of Financial Responsibility for Motor Carriers, are applicable to motor carriers as provided in §§ 387.3 or 387.27 of this chapter.

(d) *Additional requirements.* Nothing in subchapter B of this chapter shall be construed to prohibit an employer from requiring and enforcing more stringent requirements relating to safety of operation and employee safety and health.

(e) *Knowledge of and compliance with the regulations.* (1) Every employer shall be knowledgeable of and comply with all regulations contained in this subchapter that are applicable to that motor carrier's operations.

(2) Every driver and employee involved in motor carrier operations shall be instructed regarding, and shall comply with, all applicable regulations contained in this subchapter.

(3) All motor vehicle equipment and accessories required by this chapter shall be maintained in compliance with all applicable performance and design criteria set forth in this subchapter.

(f) *Exceptions.* Unless otherwise specifically provided, the rules in this subchapter do not apply to—

(1) All school bus operations as defined in § 390.5 except for the provisions of §§ 391.15(e) and (f), 392.80, and 392.82 of this chapter;

(2) Transportation performed by the Federal government, a State, or any political subdivision of a State, or an agency established under a compact between States that has been approved by the Congress of the United States;

(3) The occasional transportation of personal property by individuals not for compensation and not in the furtherance of a commercial enterprise;

(4) The transportation of human corpses or sick and injured persons;

(5) The operation of fire trucks and rescue vehicles while involved in emergency and related operations;

(6) The operation of commercial motor vehicles designed or used to transport between 9 and 15 passengers (including the driver), not for direct compensation, provided the vehicle does not otherwise meet the definition of a commercial motor vehicle, except for the provisions of §§ 391.15(e) and (f), 392.80, and 392.82, and except that motor carriers operating such vehicles are required to comply with §§ 390.15, 390.21(a) and (b)(2), 390.201 and 390.205.

(7) Either a driver of a commercial motor vehicle used primarily in the transportation of propane winter heating fuel or a driver of a motor vehicle used to respond to a pipeline emergency, if such regulations would prevent the driver from responding to an emergency condition requiring immediate response as defined in § 390.5.

(g) *Motor carriers that transport hazardous materials in intrastate commerce.* The rules in the following provisions of this subchapter apply to motor carriers that transport hazardous materials in intrastate commerce and to the motor vehicles that transport hazardous materials in intrastate commerce:

(1) Part 385, subparts A and E, for carriers subject to the requirements of § 385.403 of this subchapter.

(2) Part 386, Rules of Practice for Motor Carrier, Intermodal Equipment Provider, Broker, Freight Forwarder, and Hazardous Materials Proceedings, of this subchapter.

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(3) Part 387, Minimum Levels of Financial Responsibility for Motor Carriers, to the extent provided in §387.3 of this subchapter.

(4) Subpart E of this part, Unified Registration System, and §390.21, Marking of CMVs, for carriers subject to the requirements of §385.403 of this subchapter. Intrastate motor carriers operating prior to January 1, 2005, are excepted from §390.201.

(h) *Intermodal equipment providers.* The rules in the following provisions of this subchapter apply to intermodal equipment providers:

(1) Subpart F, Intermodal Equipment Providers, of Part 385, Safety Fitness Procedures.

(2) Part 386, Rules of Practice for Motor Carrier, Intermodal Equipment Provider, Broker, Freight Forwarder, and Hazardous Materials Proceedings.

(3) Part 390, Federal Motor Carrier Safety Regulations; General, except §390.15(b) concerning accident registers.

(4) Part 393, Parts and Accessories Necessary for Safe Operation.

(5) Part 396, Inspection, Repair, and Maintenance.

(i) *Brokers.* The rules in the following provisions of this subchapter apply to brokers that are required to register with the Agency pursuant to 49 U.S.C. chapter 139.

(1) Part 371, Brokers of Property.

(2) Part 386, Rules of Practice for Motor Carrier, Intermodal Equipment Provider, Broker, Freight Forwarder, and Hazardous Materials Proceedings.

(3) Part 387, Minimum Levels of Financial Responsibility for Motor Carriers, to the extent provided in subpart C of that part.

(4) Section 390.6, prohibiting the coercion of drivers of commercial motor vehicles operating in interstate commerce to violate certain safety regulations, and subpart E of this part, Unified Registration System.

(j) *Freight forwarders.* The rules in the following provisions of this subchapter apply to freight forwarders that are required to register with the Agency pursuant to 49 U.S.C. chapter 139.

(1) Part 386, Rules of Practice for Motor Carrier, Intermodal Equipment Provider, Broker, Freight Forwarder, and Hazardous Materials Proceedings.

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(2) Part 387, Minimum Levels of Financial Responsibility for Motor Carriers, to the extent provided in subpart D of that part.

(3) Section 390.6, prohibiting the coercion of drivers of commercial motor vehicles operating in interstate commerce to violate certain safety regulations, and subpart E of this part, Unified Registration System.

(k) *Cargo tank facilities.* The rules in subpart E of this part, Unified Registration System, apply to each cargo tank and cargo tank motor vehicle manufacturer, assembler, repairer, inspector, tester, and design certifying engineer that is subject to registration requirements under 49 CFR 107.502 and 49 U.S.C. 5108.

(1) *Shippers, receivers, consignees, and transportation intermediaries.* The rules in 49 CFR 386.12(c) and 390.6 prohibiting the coercion of drivers of commercial motor vehicles operating in interstate commerce to violate certain safety regulations are applicable to shippers, receivers, and transportation intermediaries.

[80 FR 63710, Oct. 21, 2015, as amended at 83 FR 22877, May 17, 2018]

EFFECTIVE DATE NOTE: At 82 FR 5310, Jan. 17, 2017, §390.3 was suspended, effective Jan. 14, 2017.

§ 390.3T General applicability.

(a)(1) The rules in this subchapter are applicable to all employers, employees, and commercial motor vehicles that transport property or passengers in interstate commerce.

(2) The rules in 49 CFR 386.12(c) and 390.6 prohibiting the coercion of drivers of commercial motor vehicles operating in interstate commerce:

(i) To violate certain safety regulations are applicable to all motor carriers, shippers, receivers, and transportation intermediaries; and

(ii) To violate certain commercial regulations are applicable to all operators of commercial motor vehicles.

(b) The rules in part 383 of this chapter, Commercial Driver's License Standards; Requirements and Penalties, are applicable to every person who operates a commercial motor vehicle, as defined in §383.5 of this subchapter, in interstate or intrastate

commerce and to all employers of such persons.

(c) The rules in part 387 of this chapter, Minimum Levels of Financial Responsibility for Motor Carriers, are applicable to motor carriers as provided in § 387.3 or § 387.27 of this subchapter.

(d) *Additional requirements.* Nothing in this subchapter shall be construed to prohibit an employer from requiring and enforcing more stringent requirements relating to safety of operation and employee safety and health.

(e) *Knowledge of and compliance with the regulations.* (1) Every employer shall be knowledgeable of and comply with all regulations contained in this subchapter which are applicable to that motor carrier's operations.

(2) Every driver and employee shall be instructed regarding, and shall comply with, all applicable regulations contained in this subchapter.

(3) All motor vehicle equipment and accessories required by this subchapter shall be maintained in compliance with all applicable performance and design criteria set forth in this subchapter.

(f) *Exceptions.* Unless otherwise specifically provided, the rules in this subchapter do not apply to—

(1) All school bus operations as defined in § 390.5T, except for the provisions of §§ 391.15(e) and (f), 392.80, and 392.82 of this chapter.

(2) Transportation performed by the Federal government, a State, or any political subdivision of a State, or an agency established under a compact between States that has been approved by the Congress of the United States;

(3) The occasional transportation of personal property by individuals not for compensation nor in the furtherance of a commercial enterprise;

(4) The transportation of human corpses or sick and injured persons;

(5) The operation of fire trucks and rescue vehicles while involved in emergency and related operations;

(6) The operation of commercial motor vehicles designed or used to transport between 9 and 15 passengers (including the driver), not for direct compensation, provided the vehicle does not otherwise meet the definition of a commercial motor vehicle, except that motor carriers and drivers operating such vehicles are required to

comply with §§ 390.15, 390.19T, 390.21T(a) and (b)(2), 391.15(e) and (f), 392.80 and 392.82 of this chapter.

(7) Either a driver of a commercial motor vehicle used primarily in the transportation of propane winter heating fuel or a driver of a motor vehicle used to respond to a pipeline emergency, if such regulations would prevent the driver from responding to an emergency condition requiring immediate response as defined in § 390.5T.

(g) *Motor carriers that transport hazardous materials in intrastate commerce.* The rules in the following provisions of this subchapter apply to motor carriers that transport hazardous materials in intrastate commerce and to the motor vehicles that transport hazardous materials in intrastate commerce:

(1) Part 385, subparts A and E, of this chapter for carriers subject to the requirements of § 385.403 of this chapter.

(2) Part 386 of this chapter, Rules of practice for motor carrier, broker, freight forwarder, and hazardous materials proceedings.

(3) Part 387 of this chapter, Minimum Levels of Financial Responsibility for Motor Carriers, to the extent provided in § 387.3 of this chapter.

(4) Section 390.19T, Motor carrier identification report, and § 390.21T, Marking of CMVs, for carriers subject to the requirements of § 385.403 of this chapter. Intrastate motor carriers operating prior to January 1, 2005, are exempted from § 390.19T(a)(1).

(h) *Intermodal equipment providers.* On and after December 17, 2009, the rules in the following provisions of this subchapter apply to intermodal equipment providers:

(1) Subpart F, Intermodal Equipment Providers, of part 385 of this chapter, Safety Fitness Procedures.

(2) Part 386 of this chapter, Rules of Practice for Motor Carrier, Intermodal Equipment Provider, Broker, Freight Forwarder, and Hazardous Materials Proceedings.

(3) This part, Federal Motor Carrier Safety Regulations; General, except § 390.15(b) concerning accident registers.

(4) Part 393 of this chapter, Parts and Accessories Necessary for Safe Operation.

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(5) Part 396 of this chapter, Inspection, Repair, and Maintenance.

[82 FR 5310, Jan. 17, 2017, as amended at 83 FR 22877, May 17, 2018]

§ 390.5 Definitions.

Unless specifically defined elsewhere, in this subchapter:

Accident means—

(1) Except as provided in paragraph (2) of this definition, an occurrence involving a commercial motor vehicle operating on a highway in interstate or intrastate commerce which results in:

(i) A fatality;

(ii) Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

(iii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle(s) to be transported away from the scene by a tow truck or other motor vehicle.

(2) The term accident does not include:

(i) An occurrence involving only boarding and alighting from a stationary motor vehicle; or

(ii) An occurrence involving only the loading or unloading of cargo.

Alcohol concentration (AC) means the concentration of alcohol in a person's blood or breath. When expressed as a percentage it means grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

Bus means any motor vehicle designed, constructed, and/or used for the transportation of passengers, including taxicabs.

Business district means the territory contiguous to and including a highway when within any 600 feet along such highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks, or office buildings which occupy at least 300 feet of frontage on one side or 300 feet collectively on both sides of the highway.

Certified VA medical examiner means a qualified VA examiner who has fulfilled the requirements for and is listed on the National Registry of Certified Medical Examiners.

Charter transportation of passengers means transportation, using a bus, of a

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group of persons who pursuant to a common purpose, under a single contract, at a fixed charge for the motor vehicle, have acquired the exclusive use of the motor vehicle to travel together under an itinerary either specified in advance or modified after having left the place of origin.

Coerce or Coercion means either—

(1) A threat by a motor carrier, shipper, receiver, or transportation intermediary, or their respective agents, officers or representatives, to withhold business, employment or work opportunities from, or to take or permit any adverse employment action against, a driver in order to induce the driver to operate a commercial motor vehicle under conditions which the driver stated would require him or her to violate one or more of the regulations, which the driver identified at least generally, that are codified at 49 CFR parts 171–173, 177–180, 380–383, or 390–399, or §§ 385.415 or 385.421, or the actual withholding of business, employment, or work opportunities or the actual taking or permitting of any adverse employment action to punish a driver for having refused to engage in such operation of a commercial motor vehicle; or

(2) A threat by a motor carrier, or its agents, officers or representatives, to withhold business, employment or work opportunities or to take or permit any adverse employment action against a driver in order to induce the driver to operate a commercial motor vehicle under conditions which the driver stated would require a violation of one or more of the regulations, which the driver identified at least generally, that are codified at 49 CFR parts 356, 360, or 365–379, or the actual withholding of business, employment or work opportunities or the actual taking or permitting of any adverse employment action to punish a driver for refusing to engage in such operation of a commercial motor vehicle.

Commercial motor vehicle means any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle—

(1) Has a gross vehicle weight rating or gross combination weight rating, or

gross vehicle weight or gross combination weight, of 4,536 kg (10,001 pounds) or more, whichever is greater; or

(2) Is designed or used to transport more than 8 passengers (including the driver) for compensation; or

(3) Is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or

(4) Is used in transporting material found by the Secretary of Transportation to be hazardous under 49 U.S.C. 5103 and transported in a quantity requiring placarding under regulations prescribed by the Secretary under 49 CFR, subtitle B, chapter I, subchapter C.

Conviction means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.

Covered farm vehicle—

(1) Means a straight truck or articulated vehicle—

(i) Registered in a State with a license plate or other designation issued by the State of registration that allows law enforcement officials to identify it as a farm vehicle;

(ii) Operated by the owner or operator of a farm or ranch, or an employee or family member of an owner or operator of a farm or ranch;

(iii) Used to transport agricultural commodities, livestock, machinery or supplies to or from a farm or ranch; and

(iv) Not used in for-hire motor carrier operations; however, for-hire motor carrier operations do not include the operation of a vehicle meeting the requirements of paragraphs (1)(i) through (iii) of this definition by a tenant pursuant to a crop share farm lease agreement to transport the landlord's portion of the crops under that agreement.

(2) Meeting the requirements of paragraphs (1)(i) through (iv) of this definition:

(i) With a gross vehicle weight or gross vehicle weight rating, whichever is greater, of 26,001 pounds or less may utilize the exemptions in §390.39 anywhere in the United States; or

(ii) With a gross vehicle weight or gross vehicle weight rating, whichever is greater, of more than 26,001 pounds may utilize the exemptions in §390.39 anywhere in the State of registration or across State lines within 150 air miles of the farm or ranch with respect to which the vehicle is being operated.

Crash—See accident.

Direct assistance means transportation and other relief services provided by a motor carrier or its driver(s) incident to the immediate restoration of essential services (such as, electricity, medical care, sewer, water, telecommunications, and telecommunication transmissions) or essential supplies (such as, food and fuel). It does not include transportation related to long-term rehabilitation of damaged physical infrastructure or routine commercial deliveries after the initial threat to life and property has passed.

Direct compensation means payment made to the motor carrier by the passengers or a person acting on behalf of the passengers for the transportation services provided, and not included in a total package charge or other assessment for highway transportation services.

Disabling damage means damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

(1) *Inclusions*. Damage to motor vehicles that could have been driven, but would have been further damaged if so driven.

(2) *Exclusions*. (i) Damage which can be remedied temporarily at the scene of the accident without special tools or parts.

(ii) Tire disablement without other damage even if no spare tire is available.

(iii) Headlamp or taillight damage.

(iv) Damage to turn signals, horn, or windshield wipers which makes them inoperative.

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Driveaway-towaway operation means an operation in which an empty or unladen motor vehicle with one or more sets of wheels on the surface of the roadway is being transported:

(1) Between vehicle manufacturer's facilities;

(2) Between a vehicle manufacturer and a dealership or purchaser;

(3) Between a dealership, or other entity selling or leasing the vehicle, and a purchaser or lessee;

(4) To a motor carrier's terminal or repair facility for the repair of disabling damage (as defined in §390.5) following a crash; or

(5) To a motor carrier's terminal or repair facility for repairs associated with the failure of a vehicle component or system; or

(6) By means of a saddle-mount or tow-bar.

Driver means any person who operates any commercial motor vehicle.

Driving a commercial motor vehicle while under the influence of alcohol means committing any one or more of the following acts in a CMV: Driving a CMV while the person's alcohol concentration is 0.04 or more; driving under the influence of alcohol, as prescribed by State law; or refusal to undergo such testing as is required by any State or jurisdiction in the enforcement of Table 1 to §383.51 or §392.5(a)(2) of this subchapter.

Electronic device includes, but is not limited to, a cellular telephone; personal digital assistant; pager; computer; or any other device used to input, write, send, receive, or read text.

Electronic signature means a method of signing an electronic communication that identifies and authenticates a particular person as the source of the electronic communication and indicates such person's approval of the information contained in the electronic communication, in accordance with the Government Paperwork Elimination Act (Pub. L. 105-277, Title XVII, Secs. 1701-1710, 44 U.S.C. 3504 note, 112 Stat. 2681-749).

Emergency means any hurricane, tornado, storm (e.g. thunderstorm, snowstorm, icestorm, blizzard, sandstorm, etc.), high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, mud slide, drought, for-

est fire, explosion, blackout or other occurrence, natural or man-made, which interrupts the delivery of essential services (such as, electricity, medical care, sewer, water, telecommunications, and telecommunication transmissions) or essential supplies (such as, food and fuel) or otherwise immediately threatens human life or public welfare, provided such hurricane, tornado, or other event results in:

(1) A declaration of an emergency by the President of the United States, the Governor of a State, or their authorized representatives having authority to declare emergencies; by the FMCSA Field Administrator for the geographical area in which the occurrence happens; or by other Federal, State or local government officials having authority to declare emergencies, or

(2) A request by a police officer for tow trucks to move wrecked or disabled motor vehicles.

Emergency condition requiring immediate response means any condition that, if left unattended, is reasonably likely to result in immediate serious bodily harm, death, or substantial damage to property. In the case of transportation of propane winter heating fuel, such conditions shall include (but are not limited to) the detection of gas odor, the activation of carbon monoxide alarms, the detection of carbon monoxide poisoning, and any real or suspected damage to a propane gas system following a severe storm or flooding. An "emergency condition requiring immediate response" does not include requests to refill empty gas tanks. In the case of a pipeline emergency, such conditions include (but are not limited to) indication of an abnormal pressure event, leak, release or rupture.

Emergency relief means an operation in which a motor carrier or driver of a commercial motor vehicle is providing direct assistance to supplement State and local efforts and capabilities to save lives or property or to protect public health and safety as a result of an emergency as defined in this section.

Employee means any individual, other than an employer, who is employed by an employer and who in the course of his or her employment directly affects

commercial motor vehicle safety. Such term includes a driver of a commercial motor vehicle (including an independent contractor while in the course of operating a commercial motor vehicle), a mechanic, and a freight handler. Such term does not include an employee of the United States, any State, any political subdivision of a State, or any agency established under a compact between States and approved by the Congress of the United States who is acting within the course of such employment.

Employer means any person engaged in a business affecting interstate commerce who owns or leases a commercial motor vehicle in connection with that business, or assigns employees to operate it, but such terms does not include the United States, any State, any political subdivision of a State, or an agency established under a compact between States approved by the Congress of the United States.

Exempt intracity zone means the geographic area of a municipality or the commercial zone of that municipality described in appendix F to subchapter B of this chapter. The term "exempt intracity zone" does not include any municipality or commercial zone in the State of Hawaii. For purposes of §391.62, a driver may be considered to operate a commercial motor vehicle wholly within an exempt intracity zone notwithstanding any common control, management, or arrangement for a continuous carriage or shipment to or from a point without such zone.

Exempt motor carrier means a person engaged in transportation exempt from economic regulation by the Federal Motor Carrier Safety Administration (FMCSA) under 49 U.S.C. chapter 135 but subject to the safety regulations set forth in this subchapter.

Farm vehicle driver means a person who drives only a commercial motor vehicle that is—

- (1) Controlled and operated by a farmer as a private motor carrier of property;
- (2) Being used to transport either—
 - (i) Agricultural products, or
 - (ii) Farm machinery, farm supplies, or both, to or from a farm;
- (3) Not being used in the operation of a for-hire motor carrier;

- (4) Not carrying hazardous materials of a type or quantity that requires the commercial motor vehicle to be placarded in accordance with §177.823 of this subtitle; and

- (5) Being used within 150 air-miles of the farmer's farm.

Farmer means any person who operates a farm or is directly involved in the cultivation of land, crops, or livestock which—

- (1) Are owned by that person; or
- (2) Are under the direct control of that person.

Fatality means any injury which results in the death of a person at the time of the motor vehicle accident or within 30 days of the accident.

Federal Motor Carrier Safety Administrator means the chief executive of the Federal Motor Carrier Safety Administration, an agency within the Department of Transportation.

For-hire motor carrier means a person engaged in the transportation of goods or passengers for compensation.

Gross combination weight rating (GCWR) is the greater of:

- (1) A value specified by the manufacturer of the power unit, if such value is displayed on the Federal Motor Vehicle Safety Standard (FMVSS) certification label required by the National Highway Traffic Safety Administration, or

- (2) The sum of the gross vehicle weight ratings (GVWRs) or the gross vehicle weights (GVWs) of the power unit and the towed unit(s), or any combination thereof, that produces the highest value. Exception: The GCWR of the power unit will not be used to define a commercial motor vehicle when the power unit is not towing another vehicle.

Gross vehicle weight rating (GVWR) means the value specified by the manufacturer as the loaded weight of a single motor vehicle.

Hazardous material means a substance or material which has been determined by the Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated.

Hazardous substance means a material, and its mixtures or solutions, that is identified in the appendix to §172.101,

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List of Hazardous Substances and Reportable Quantities, of this title when offered for transportation in one package, or in one transport motor vehicle if not packaged, and when the quantity of the material therein equals or exceeds the reportable quantity (RQ). This definition does not apply to petroleum products that are lubricants or fuels, or to mixtures or solutions of hazardous substances if in a concentration less than that shown in the table in §171.8 of this title, based on the reportable quantity (RQ) specified for the materials listed in the appendix to §172.101.

Hazardous waste means any material that is subject to the hazardous waste manifest requirements of the EPA specified in 40 CFR part 262 or would be subject to these requirements absent an interim authorization to a State under 40 CFR part 123, subpart F.

Highway means any road, street, or way, whether on public or private property, open to public travel. "Open to public travel" means that the road section is available, except during scheduled periods, extreme weather or emergency conditions, passable by four-wheel standard passenger cars, and open to the general public for use without restrictive gates, prohibitive signs, or regulation other than restrictions based on size, weight, or class of registration. Toll plazas of public toll roads are not considered restrictive gates.

Interchange means—

(1) The act of providing intermodal equipment to a motor carrier pursuant to an intermodal equipment interchange agreement for the purpose of transporting the equipment for loading or unloading by any person or repositioning the equipment for the benefit of the equipment provider, but it does not include the leasing of equipment to a motor carrier for primary use in the motor carrier's freight hauling operations; or

(2) The act of providing a passenger-carrying commercial motor vehicle by one motor carrier of passengers to another such carrier, at a point which both carriers are authorized to serve, with which to continue a through movement.

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(3) For property-carrying vehicles, see §376.2 of this subchapter.

Intermodal equipment means trailing equipment that is used in the intermodal transportation of containers over public highways in interstate commerce, including trailers and chassis.

Intermodal equipment interchange agreement means the Uniform Intermodal Interchange and Facilities Access Agreement (UIIFA) or any other written document executed by an intermodal equipment provider or its agent and a motor carrier or its agent, the primary purpose of which is to establish the responsibilities and liabilities of both parties with respect to the interchange of the intermodal equipment.

Intermodal equipment provider means any person that interchanges intermodal equipment with a motor carrier pursuant to a written interchange agreement or has a contractual responsibility for the maintenance of the intermodal equipment.

Interstate commerce means trade, traffic, or transportation in the United States—

(1) Between a place in a State and a place outside of such State (including a place outside of the United States);

(2) Between two places in a State through another State or a place outside of the United States; or

(3) Between two places in a State as part of trade, traffic, or transportation originating or terminating outside the State or the United States.

Intrastate commerce means any trade, traffic, or transportation in any State which is not described in the term "interstate commerce."

Lease, as used in subpart G of this part, means a contract or agreement in which a motor carrier of passengers grants the use of a passenger-carrying commercial motor vehicle to another motor carrier, with or without a driver, for a specified period for the transportation of passengers, whether or not compensation for such use is specified or required, when one or more of the motor carriers of passengers is not authorized to operate in interstate commerce pursuant to 49 U.S.C. 13901–13902. The term *lease* includes an interchange, as defined in this section, or other

agreement granting the use of a passenger-carrying commercial motor vehicle for a specified period, with or without a driver, whether or not compensation for such use is specified or required. For a definition of *lease* in the context of property-carrying vehicles, see §376.2 of this subchapter.

Lessee, as used in subpart G of this part, means the motor carrier obtaining the use of a passenger-carrying commercial motor vehicle, with or without the driver, from another motor carrier, through a *lease* as defined in this section. The term *lessee* includes a motor carrier obtaining the use of a passenger-carrying commercial motor vehicle from another motor carrier under an interchange or other agreement, with or without a driver, whether or not compensation for such use is specified. For a definition of *lessee* in the context of property-carrying vehicles, see §376.2 of this subchapter.

Lessor, as used in subpart G of this part, means the motor carrier granting the use of a passenger-carrying commercial motor vehicle, with or without the driver, to another motor carrier, through a *lease* as defined in this section. The term *lessor* includes a motor carrier granting the use of a passenger-carrying commercial motor vehicle, with or without the driver, to another motor carrier under an interchange or other agreement, whether or not compensation for such use is specified. For a definition of *lessor* in the context of property-carrying vehicles, see §376.2 of this subchapter.

Medical examiner means an individual certified by FMCSA and listed on the National Registry of Certified Medical Examiners in accordance with subpart D of this part.

Medical variance means a driver has received one of the following from FMCSA that allows the driver to be issued a medical certificate:

- (1) An exemption letter permitting operation of a commercial motor vehicle pursuant to part 381, subpart C, of this chapter or §391.64 of this chapter;
- (2) A skill performance evaluation certificate permitting operation of a commercial motor vehicle pursuant to §391.49 of this chapter.

Mobile telephone means a mobile communication device that falls under or

uses any commercial mobile radio service, as defined in regulations of the Federal Communications Commission, 47 CFR 20.3. It does not include two-way or Citizens Band Radio services.

Motor carrier means a for-hire motor carrier or a private motor carrier. The term includes a motor carrier's agents, officers and representatives as well as employees responsible for hiring, supervising, training, assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of motor vehicle equipment and/or accessories. For purposes of subchapter B, this definition includes the terms *employer*, and *exempt motor carrier*.

Motor vehicle means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property, or any combination thereof determined by the Federal Motor Carrier Safety Administration, but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails, or a trolley bus operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street-railway service.

Motor vehicle record means the report of the driving status and history of a driver generated from the driver record, provided to users, such as, drivers or employers, and subject to the provisions of the Driver Privacy Protection Act, 18 U.S.C. 2721–2725.

Multiple-employer driver means a driver, who in any period of 7 consecutive days, is employed or used as a driver by more than one motor carrier.

Operating authority means the registration required by 49 U.S.C. 13902, 49 CFR part 365, 49 CFR part 368, and 49 CFR 392.9a.

Operator—See driver.

Other terms—Any other term used in this subchapter is used in its commonly accepted meaning, except where such other term has been defined elsewhere in this subchapter. In that event, the definition therein given shall apply.

Out-of-service order means a declaration by an authorized enforcement officer of a Federal, State, Canadian,

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Mexican, or local jurisdiction that a driver, a commercial motor vehicle, or a motor carrier operation is out of service pursuant to 49 CFR 386.72, 392.5, 392.9a, 395.13, or 396.9, or compatible laws, or the North American Standard Out-of-Service Criteria.

Person means any individual, partnership, association, corporation, business trust, or any other organized group of individuals.

Previous employer means any DOT regulated person who employed the driver in the preceding 3 years, including any possible current employer.

Principal place of business means the single location designated by the motor carrier, normally its headquarters, for purposes of identification under this subchapter. The motor carrier must make records required by parts 382, 387, 390, 391, 395, 396, and 397 of this subchapter available for inspection at this location within 48 hours (Saturdays, Sundays, and Federal holidays excluded) after a request has been made by a special agent or authorized representative of the Federal Motor Carrier Safety Administration.

Private motor carrier means a person who provides transportation of property or passengers, by commercial motor vehicle, and is not a for-hire motor carrier.

Private motor carrier of passengers (business) means a private motor carrier engaged in the interstate transportation of passengers which is provided in the furtherance of a commercial enterprise and is not available to the public at large.

Private motor carrier of passengers (nonbusiness) means private motor carrier involved in the interstate transportation of passengers that does not otherwise meet the definition of a private motor carrier of passengers (business).

Qualified VA examiner means an advanced practice nurse, doctor of chiropractic, doctor of medicine, doctor of osteopathy, physician assistant, or other medical professional who is employed in the Department of Veterans Affairs; is licensed, certified, or registered in a State to perform physical examinations; is familiar with the standards for, and physical requirements of, an operator certified pursu-

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ant to 49 U.S.C. 31149; and has never, with respect to such section, been found to have acted fraudulently, including by fraudulently awarding a medical certificate.

Radar detector means any device or mechanism to detect the emission of radio microwaves, laser beams or any other future speed measurement technology employed by enforcement personnel to measure the speed of commercial motor vehicles upon public roads and highways for enforcement purposes. Excluded from this definition are radar detection devices that meet both of the following requirements:

(1) Transported outside the driver's compartment of the commercial motor vehicle. For this purpose, the driver's compartment of a passenger-carrying CMV shall include all space designed to accommodate both the driver and the passengers; and

(2) Completely inaccessible to, imperceptible to, and imperceptible to the driver while operating the commercial motor vehicle.

Receiver or consignee means a person who takes delivery from a motor carrier or driver of a commercial motor vehicle of property transported in interstate commerce or hazardous materials transported in interstate or intrastate commerce.

Regional Director of Motor Carriers means the Field Administrator, Federal Motor Carrier Safety Administration, for a given geographical area of the United States.

Residential district means the territory adjacent to and including a highway which is not a business district and for a distance of 300 feet or more along the highway is primarily improved with residences.

School bus means a passenger motor vehicle which is designed or used to carry more than 10 passengers in addition to the driver, and which the Secretary determines is likely to be significantly used for the purpose of transporting preprimary, primary, or secondary school students to such schools from home or from such schools to home.

School bus operation means the use of a school bus to transport only school children and/or school personnel from

home to school and from school to home.

Secretary means the Secretary of Transportation.

Shipper means a person who tenders property to a motor carrier or driver of a commercial motor vehicle for transportation in interstate commerce, or who tenders hazardous materials to a motor carrier or driver of a commercial motor vehicle for transportation in interstate or intrastate commerce.

Single-employer driver means a driver who, in any period of 7 consecutive days, is employed or used as a driver solely by a single motor carrier. This term includes a driver who operates a commercial motor vehicle on an intermittent, casual, or occasional basis.

Special agent See appendix B to subchapter B—Special agents.

State means a State of the United States and the District of Columbia and includes a political subdivision of a State.

Texting means manually entering alphanumeric text into, or reading text from, an electronic device.

(1) This action includes, but is not limited to, short message service, emailing, instant messaging, a command or request to access a World Wide Web page, pressing more than a single button to initiate or terminate a voice communication using a mobile telephone, or engaging in any other form of electronic text retrieval or entry, for present or future communication.

(2) Texting does not include:

(i) Inputting, selecting, or reading information on a global positioning system or navigation system; or

(ii) Pressing a single button to initiate or terminate a voice communication using a mobile telephone; or

(iii) Using a device capable of performing multiple functions (*e.g.*, fleet management systems, dispatching devices, smart phones, citizens band radios, music players, *etc.*) for a purpose that is not otherwise prohibited in this subchapter.

Trailer includes:

(1) *Full trailer* means any motor vehicle other than a pole trailer which is designed to be drawn by another motor vehicle and so constructed that no part of its weight, except for the towing device, rests upon the self-propelled tow-

ing motor vehicle. A semitrailer equipped with an auxiliary front axle (converter dolly) shall be considered a full trailer.

(2) *Pole trailer* means any motor vehicle which is designed to be drawn by another motor vehicle and attached to the towing motor vehicle by means of a “reach” or “pole,” or by being “boomed” or otherwise secured to the towing motor vehicle, for transporting long or irregularly shaped loads such as poles, pipes, or structural members, which generally are capable of sustaining themselves as beams between the supporting connections.

(3) *Semitrailer* means any motor vehicle, other than a pole trailer, which is designed to be drawn by another motor vehicle and is constructed so that some part of its weight rests upon the self-propelled towing motor vehicle.

Transportation intermediary means a person who arranges the transportation of property or passengers by commercial motor vehicle in interstate commerce, or who arranges the transportation of hazardous materials by commercial motor vehicle in interstate or intrastate commerce, including but not limited to brokers and freight forwarders.

Truck means any self-propelled commercial motor vehicle except a truck tractor, designed and/or used for the transportation of property.

Truck tractor means a self-propelled commercial motor vehicle designed and/or used primarily for drawing other vehicles.

Use a hand-held mobile telephone means:

(1) Using at least one hand to hold a mobile telephone to conduct a voice communication;

(2) Dialing or answering a mobile telephone by pressing more than a single button, or

(3) Reaching for a mobile telephone in a manner that requires a driver to maneuver so that he or she is no longer in a seated driving position, restrained by a seat belt that is installed in accordance with 49 CFR 393.93 and adjusted in accordance with the vehicle manufacturer’s instructions.

United States means the 50 States and the District of Columbia.

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Veteran operator means an operator of a commercial motor vehicle who is a veteran enrolled in the health care system established under 38 U.S.C. 1705(a).

Written or in writing means printed, handwritten, or typewritten either on paper or other tangible medium, or by any method of electronic documentation that meets the requirements of 49 CFR 390.32.

[53 FR 18052, May 19, 1988]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 390.5, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

EFFECTIVE DATE NOTE: At 82 FR 5311, Jan. 17, 2017, § 390.5 was suspended, effective Jan. 14, 2017. At 84 FR 40293, Aug. 14, 2019, the suspension was lifted and amendments were made to § 390.5. In that same document, § 390.5 was again suspended indefinitely.

§ 390.5T Definitions.

Unless specifically defined elsewhere, in this subchapter:

Accident means—

(1) Except as provided in paragraph (2) of this definition, an occurrence involving a commercial motor vehicle operating on a highway in interstate or intrastate commerce which results in:

(i) A fatality;

(ii) Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

(iii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle(s) to be transported away from the scene by a tow truck or other motor vehicle.

(2) The term accident does not include:

(i) An occurrence involving only boarding and alighting from a stationary motor vehicle; or

(ii) An occurrence involving only the loading or unloading of cargo.

Alcohol concentration (AC) means the concentration of alcohol in a person's blood or breath. When expressed as a percentage it means grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

Bus means any motor vehicle designed, constructed, and/or used for the

transportation of passengers, including taxicabs.

Business district means the territory contiguous to and including a highway when within any 600 feet along such highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks, or office buildings which occupy at least 300 feet of frontage on one side or 300 feet collectively on both sides of the highway.

Certified VA medical examiner means a qualified VA examiner who has fulfilled the requirements for and is listed on the National Registry of Certified Medical Examiners.

Charter transportation of passengers means transportation, using a bus, of a group of persons who pursuant to a common purpose, under a single contract, at a fixed charge for the motor vehicle, have acquired the exclusive use of the motor vehicle to travel together under an itinerary either specified in advance or modified after having left the place of origin.

Coerce or Coercion meanseither—

(1) A threat by a motor carrier, shipper, receiver, or transportation intermediary, or their respective agents, officers or representatives, to withhold business, employment or work opportunities from, or to take or permit any adverse employment action against, a driver in order to induce the driver to operate a commercial motor vehicle under conditions which the driver stated would require him or her to violate one or more of the regulations, which the driver identified at least generally, that are codified at 49 CFR parts 171 through 173, 177 through 180, 380 through 383, or 390 through 399, or § 385.415 or § 385.421T of this chapter, or the actual withholding of business, employment, or work opportunities or the actual taking or permitting of any adverse employment action to punish a driver for having refused to engage in such operation of a commercial motor vehicle; or

(2) A threat by a motor carrier, or its agents, officers or representatives, to withhold business, employment or work opportunities or to take or permit any adverse employment action against a driver in order to induce the driver to operate a commercial motor

vehicle under conditions which the driver stated would require a violation of one or more of the regulations, which the driver identified at least generally, that are codified at 49 CFR parts 356, 360, or 365 through 379, or the actual withholding of business, employment or work opportunities or the actual taking or permitting of any adverse employment action to punish a driver for refusing to engage in such operation of a commercial motor vehicle.

Commercial motor vehicle means any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle—

(1) Has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of 4,536 kg (10,001 pounds) or more, whichever is greater; or

(2) Is designed or used to transport more than 8 passengers (including the driver) for compensation; or

(3) Is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or

(4) Is used in transporting material found by the Secretary of Transportation to be hazardous under 49 U.S.C. 5103 and transported in a quantity requiring placarding under regulations prescribed by the Secretary under 49 CFR, subtitle B, chapter I, subchapter C.

Conviction means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.

Covered farm vehicle means—

(1) A straight truck or articulated vehicle—

(i) Registered in a State with a license plate or other designation issued by the State of registration that allows

law enforcement officials to identify it as a farm vehicle;

(ii) Operated by the owner or operator of a farm or ranch, or an employee or family member of an owner or operator of a farm or ranch;

(iii) Used to transport agricultural commodities, livestock, machinery or supplies to or from a farm or ranch; and

(iv) Not used in for-hire motor carrier operations; however, for-hire motor carrier operations do not include the operation of a vehicle meeting the requirements of paragraphs (1)(i) through (iii) of this definition by a tenant pursuant to a crop share farm lease agreement to transport the landlord's portion of the crops under that agreement.

(2) Meeting the requirements of paragraphs (1)(i) through (iv) of this definition:

(i) With a gross vehicle weight or gross vehicle weight rating, whichever is greater, of 26,001 pounds or less may utilize the exemptions in §390.39 anywhere in the United States; or

(ii) With a gross vehicle weight or gross vehicle weight rating, whichever is greater, of more than 26,001 pounds may utilize the exemptions in §390.39 anywhere in the State of registration or across State lines within 150 air miles of the farm or ranch with respect to which the vehicle is being operated.

Crash. See accident.

Direct assistance means transportation and other relief services provided by a motor carrier or its driver(s) incident to the immediate restoration of essential services (such as, electricity, medical care, sewer, water, telecommunications, and telecommunication transmissions) or essential supplies (such as, food and fuel). It does not include transportation related to long-term rehabilitation of damaged physical infrastructure or routine commercial deliveries after the initial threat to life and property has passed.

Direct compensation means payment made to the motor carrier by the passengers or a person acting on behalf of the passengers for the transportation services provided, and not included in a

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total package charge or other assessment for highway transportation services.

Disabling damage means damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

(1) *Inclusions.* Damage to motor vehicles that could have been driven, but would have been further damaged if so driven.

(2) *Exclusions.* (i) Damage which can be remedied temporarily at the scene of the accident without special tools or parts.

(ii) Tire disablement without other damage even if no spare tire is available.

(iii) Headlamp or taillight damage.

(iv) Damage to turn signals, horn, or windshield wipers which makes them inoperative.

Driveaway-towaway operation means an operation in which an empty or unladen motor vehicle with one or more sets of wheels on the surface of the roadway is being transported:

(1) Between vehicle manufacturer's facilities;

(2) Between a vehicle manufacturer and a dealership or purchaser;

(3) Between a dealership, or other entity selling or leasing the vehicle, and a purchaser or lessee;

(4) To a motor carrier's terminal or repair facility for the repair of disabling damage (as defined in this section) following a crash; or

(5) To a motor carrier's terminal or repair facility for repairs associated with the failure of a vehicle component or system; or

(6) By means of a saddle-mount or tow-bar.

Driver means any person who operates any commercial motor vehicle.

Driving a commercial motor vehicle while under the influence of alcohol means committing any one or more of the following acts in a CMV: Driving a CMV while the person's alcohol concentration is 0.04 or more; driving under the influence of alcohol, as prescribed by State law; or refusal to undergo such testing as is required by any State or jurisdiction in the enforcement of Table 1 to §383.51 or §392.5(a)(2) of this subchapter.

Electronic device includes, but is not limited to, a cellular telephone; personal digital assistant; pager; computer; or any other device used to input, write, send, receive, or read text.

Electronic signature means a method of signing an electronic communication that identifies and authenticates a particular person as the source of the electronic communication and indicates such person's approval of the information contained in the electronic communication, in accordance with the Government Paperwork Elimination Act (Pub. L. 105-277, Title XVII, Secs. 1701-1710, 44 U.S.C. 3504 note, 112 Stat. 2681-749).

Emergency means any hurricane, tornado, storm (e.g. thunderstorm, snowstorm, icestorm, blizzard, sandstorm, etc.), high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, mud slide, drought, forest fire, explosion, blackout or other occurrence, natural or man-made, which interrupts the delivery of essential services (such as, electricity, medical care, sewer, water, telecommunications, and telecommunication transmissions) or essential supplies (such as, food and fuel) or otherwise immediately threatens human life or public welfare, provided such hurricane, tornado, or other event results in:

(1) A declaration of an emergency by the President of the United States, the Governor of a State, or their authorized representatives having authority to declare emergencies; by the FMCSA Field Administrator for the geographical area in which the occurrence happens; or by other Federal, State or local government officials having authority to declare emergencies; or

(2) A request by a police officer for tow trucks to move wrecked or disabled motor vehicles.

Emergency condition requiring immediate response means any condition that, if left unattended, is reasonably likely to result in immediate serious bodily harm, death, or substantial damage to property. In the case of transportation of propane winter heating fuel, such conditions shall include (but are not limited to) the detection of gas odor, the activation of carbon monoxide alarms, the detection of carbon monoxide poisoning, and any real

or suspected damage to a propane gas system following a severe storm or flooding. An “emergency condition requiring immediate response” does not include requests to refill empty gas tanks. In the case of a pipeline emergency, such conditions include (but are not limited to) indication of an abnormal pressure event, leak, release or rupture.

Emergency relief means an operation in which a motor carrier or driver of a commercial motor vehicle is providing direct assistance to supplement State and local efforts and capabilities to save lives or property or to protect public health and safety as a result of an emergency as defined in this section.

Employee means any individual, other than an employer, who is employed by an employer and who in the course of his or her employment directly affects commercial motor vehicle safety. Such term includes a driver of a commercial motor vehicle (including an independent contractor while in the course of operating a commercial motor vehicle), a mechanic, and a freight handler. Such term does not include an employee of the United States, any State, any political subdivision of a State, or any agency established under a compact between States and approved by the Congress of the United States who is acting within the course of such employment.

Employer means any person engaged in a business affecting interstate commerce who owns or leases a commercial motor vehicle in connection with that business, or assigns employees to operate it, but such terms does not include the United States, any State, any political subdivision of a State, or an agency established under a compact between States approved by the Congress of the United States.

Exempt intracity zone means the geographic area of a municipality or the commercial zone of that municipality described in appendix F to this subchapter. The term “exempt intracity zone” does not include any municipality or commercial zone in the State of Hawaii. For purposes of §391.62 of this chapter, a driver may be considered to operate a commercial motor vehicle wholly within an exempt intra-

city zone notwithstanding any common control, management, or arrangement for a continuous carriage or shipment to or from a point without such zone.

Exempt motor carrier means a person engaged in transportation exempt from economic regulation by the Federal Motor Carrier Safety Administration (FMCSA) under 49 U.S.C. 13506. “Exempt motor carriers” are subject to the safety regulations set forth in this subchapter.

Farm vehicle driver means a person who drives only a commercial motor vehicle that is—

- (1) Controlled and operated by a farmer as a private motor carrier of property;
- (2) Being used to transport either—
 - (i) Agricultural products; or
 - (ii) Farm machinery, farm supplies, or both, to or from a farm;
- (3) Not being used in the operation of a for-hire motor carrier;
- (4) Not carrying hazardous materials of a type or quantity that requires the commercial motor vehicle to be placarded in accordance with §177.823 of this subtitle; and
- (5) Being used within 150 air-miles of the farmer’s farm.

Farmer means any person who operates a farm or is directly involved in the cultivation of land, crops, or livestock which—

- (1) Are owned by that person; or
- (2) Are under the direct control of that person.

Fatality means any injury which results in the death of a person at the time of the motor vehicle accident or within 30 days of the accident.

Federal Motor Carrier Safety Administrator means the chief executive of the Federal Motor Carrier Safety Administration, an agency within the Department of Transportation.

For-hire motor carrier means a person engaged in the transportation of goods or passengers for compensation.

Gross combination weight rating (GCWR) is the greater of:

- (1) A value specified by the manufacturer of the power unit, if such value is displayed on the Federal Motor Vehicle Safety Standard (FMVSS) certification label required by the National Highway Traffic Safety Administration; or

(2) The sum of the gross vehicle weight ratings (GVWRs) or the gross vehicle weights (GVWs) of the power unit and the towed unit(s), or any combination thereof, that produces the highest value. Exception: The GCWR of the power unit will not be used to define a commercial motor vehicle when the power unit is not towing another vehicle.

Gross vehicle weight rating (GVWR) means the value specified by the manufacturer as the loaded weight of a single motor vehicle.

Hazardous material means a substance or material which has been determined by the Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated.

Hazardous substance means a material, and its mixtures or solutions, that is identified in the appendix to §172.101 of this title, List of Hazardous Substances and Reportable Quantities, of this title when offered for transportation in one package, or in one transport motor vehicle if not packaged, and when the quantity of the material therein equals or exceeds the reportable quantity (RQ). This definition does not apply to petroleum products that are lubricants or fuels, or to mixtures or solutions of hazardous substances if in a concentration less than that shown in the table in §171.8 of this title, based on the reportable quantity (RQ) specified for the materials listed in the appendix to §172.101 of this title.

Hazardous waste means any material that is subject to the hazardous waste manifest requirements of the EPA specified in 40 CFR part 262 or would be subject to these requirements absent an interim authorization to a State under 40 CFR part 123, subpart F.

Highway means any road, street, or way, whether on public or private property, open to public travel. “Open to public travel” means that the road section is available, except during scheduled periods, extreme weather or emergency conditions, passable by four-wheel standard passenger cars, and open to the general public for use without restrictive gates, prohibitive signs, or regulation other than restrictions based on size, weight, or class of reg-

istration. Toll plazas of public toll roads are not considered restrictive gates.

Interchange means—

(1) The act of providing intermodal equipment to a motor carrier pursuant to an intermodal equipment interchange agreement for the purpose of transporting the equipment for loading or unloading by any person or repositioning the equipment for the benefit of the equipment provider, but it does not include the leasing of equipment to a motor carrier for primary use in the motor carrier’s freight hauling operations; or

(2) The act of providing a passenger-carrying commercial motor vehicle by one motor carrier of passengers to another such carrier, at a point which both carriers are authorized to serve, with which to continue a through movement.

(3) For property-carrying vehicles, see §376.2 of this subchapter.

Intermodal equipment means trailing equipment that is used in the intermodal transportation of containers over public highways in interstate commerce, including trailers and chassis.

Intermodal equipment interchange agreement means the Uniform Intermodal Interchange and Facilities Access Agreement (UIIFA) or any other written document executed by an intermodal equipment provider or its agent and a motor carrier or its agent, the primary purpose of which is to establish the responsibilities and liabilities of both parties with respect to the interchange of the intermodal equipment.

Intermodal equipment provider means any person that interchanges intermodal equipment with a motor carrier pursuant to a written interchange agreement or has a contractual responsibility for the maintenance of the intermodal equipment.

Interstate commerce means trade, traffic, or transportation in the United States—

(1) Between a place in a State and a place outside of such State (including a place outside of the United States);

(2) Between two places in a State through another State or a place outside of the United States; or

(3) Between two places in a State as part of trade, traffic, or transportation originating or terminating outside the State or the United States.

Intrastate commerce means any trade, traffic, or transportation in any State which is not described in the term "interstate commerce."

Lease, as used in subpart G of this part, means a contract or agreement in which a motor carrier or passengers grants the use of a passenger-carrying commercial motor vehicle, with or without the driver, to another motor carrier, for a specified period for the transportation of passengers, whether or not compensation for such use is specified or required, when one or more of the motor carriers of passengers is not authorized to operate in interstate commerce pursuant to 49 U.S.C. 13901-13902. The term *lease* includes an interchange, as defined in this section, or other agreement granting the use of a passenger-carrying commercial motor vehicle, with or without the driver, for a specified period, whether or not compensation for such use is specified or required. For a definition of *lease* in the context of property-carrying vehicles, see §376.2 of this subchapter.

Lessee, as used in subpart G of this part, means the motor carrier obtaining the use of a passenger-carrying commercial motor vehicle, with or without the driver, from another motor carrier, through a *lease* as defined in this section. The term *lessee* includes a motor carrier obtaining the use of a passenger-carrying commercial motor vehicle, with or without the driver, from another motor carrier under an interchange or other agreement, whether or not compensation for such use is specified. For a definition of *lessee* in the context of property-carrying vehicles, see §376.2 of this subchapter.

Lessor, as used in subpart G of this part, means the motor carrier granting the use of a passenger-carrying commercial motor vehicle, with or without the driver, to another motor carrier, through a *lease* as defined in this section. The term *lessor* includes a motor carrier granting the use of a passenger-carrying commercial motor vehicle, with or without the driver, to another motor carrier under an interchange or other agreement, whether or not com-

penensation for such use is specified. For a definition of *lessor* in the context of property-carrying vehicles, see §376.2 of this subchapter.

Medical examiner means an individual certified by FMCSA and listed on the National Registry of Certified Medical Examiners in accordance with subpart D of this part.

Medical variance means a driver has received one of the following from FMCSA that allows the driver to be issued a medical certificate:

(1) An exemption letter permitting operation of a commercial motor vehicle pursuant to part 381, subpart C, of this chapter or §391.64 of this chapter;

(2) A skill performance evaluation certificate permitting operation of a commercial motor vehicle pursuant to §391.49 of this chapter.

Mobile telephone means a mobile communication device that falls under or uses any commercial mobile radio service, as defined in regulations of the Federal Communications Commission, 47 CFR 20.3. It does not include two-way or Citizens Band Radio services.

Motor carrier means a for-hire motor carrier or a private motor carrier. The term includes a motor carrier's agents, officers and representatives as well as employees responsible for hiring, supervising, training, assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of motor vehicle equipment and/or accessories. For purposes of this subchapter, this definition includes the terms employer, and exempt motor carrier.

Motor vehicle means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property, or any combination thereof determined by the Federal Motor Carrier Safety Administration, but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails, or a trolley bus operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street-railway service.

Motor vehicle record means the report of the driving status and history of a driver generated from the driver

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record, provided to users, such as, drivers or employers, and subject to the provisions of the Driver Privacy Protection Act, 18 U.S.C. 2721–2725.

Multiple-employer driver means a driver, who in any period of 7 consecutive days, is employed or used as a driver by more than one motor carrier.

Operating authority means the registration required by 49 U.S.C. 13902, 49 CFR part 365, 49 CFR part 368, and 49 CFR 392.9a.

Operator. See driver.

Other terms. Any other term used in this subchapter is used in its commonly accepted meaning, except where such other term has been defined elsewhere in this subchapter. In that event, the definition therein given shall apply.

Out-of-service order means a declaration by an authorized enforcement officer of a Federal, State, Canadian, Mexican, or local jurisdiction that a driver, a commercial motor vehicle, or a motor carrier operation is out of service pursuant to 49 CFR 386.72, 392.5, 392.9a, 395.13, or 396.9, or compatible laws, or the North American Standard Out-of-Service Criteria.

Person means any individual, partnership, association, corporation, business trust, or any other organized group of individuals.

Previous employer means any DOT regulated person who employed the driver in the preceding 3 years, including any possible current employer.

Principal place of business means the single location designated by the motor carrier, normally its headquarters, for purposes of identification under this subchapter. The motor carrier must make records required by parts 382, 387, 390, 391, 395, 396, and 397 of this subchapter available for inspection at this location within 48 hours (Saturdays, Sundays, and Federal holidays excluded) after a request has been made by a special agent or authorized representative of the Federal Motor Carrier Safety Administration.

Private motor carrier means a person who provides transportation of property or passengers, by commercial motor vehicle, and is not a for-hire motor carrier.

Private motor carrier of passengers (business) means a private motor car-

rier engaged in the interstate transportation of passengers which is provided in the furtherance of a commercial enterprise and is not available to the public at large.

Private motor carrier of passengers (nonbusiness) means private motor carrier involved in the interstate transportation of passengers that does not otherwise meet the definition of a private motor carrier of passengers (business).

Qualified VA examiner means an advanced practice nurse, doctor of chiropractic, doctor of medicine, doctor of osteopathy, physician assistant, or other medical professional who is employed in the Department of Veterans Affairs; is licensed, certified, or registered in a State to perform physical examinations; is familiar with the standards for, and physical requirements of, an operator certified pursuant to 49 U.S.C. 31149; and has never, with respect to such section, been found to have acted fraudulently, including by fraudulently awarding a medical certificate.

Radar detector means any device or mechanism to detect the emission of radio microwaves, laser beams or any other future speed measurement technology employed by enforcement personnel to measure the speed of commercial motor vehicles upon public roads and highways for enforcement purposes. Excluded from this definition are radar detection devices that meet both of the following requirements:

(1) Transported outside the driver's compartment of the commercial motor vehicle. For this purpose, the driver's compartment of a passenger-carrying CMV shall include all space designed to accommodate both the driver and the passengers; and

(2) Completely inaccessible to, inoperable by, and imperceptible to the driver while operating the commercial motor vehicle.

Receiver or consignee means a person who takes delivery from a motor carrier or driver of a commercial motor vehicle of property transported in interstate commerce or hazardous materials transported in interstate or intrastate commerce.

Regional Director of Motor Carriers means the Field Administrator, Federal Motor Carrier Safety Administration, for a given geographical area of the United States.

Residential district means the territory adjacent to and including a highway which is not a business district and for a distance of 300 feet or more along the highway is primarily improved with residences.

School bus means a passenger motor vehicle which is designed or used to carry more than 10 passengers in addition to the driver, and which the Secretary determines is likely to be significantly used for the purpose of transporting preprimary, primary, or secondary school students to such schools from home or from such schools to home.

School bus operation means the use of a school bus to transport only school children and/or school personnel from home to school and from school to home.

Secretary means the Secretary of Transportation.

Shipper means a person who tenders property to a motor carrier or driver of a commercial motor vehicle for transportation in interstate commerce, or who tenders hazardous materials to a motor carrier or driver of a commercial motor vehicle for transportation in interstate or intrastate commerce.

Single-employer driver means a driver who, in any period of 7 consecutive days, is employed or used as a driver solely by a single motor carrier. This term includes a driver who operates a commercial motor vehicle on an intermittent, casual, or occasional basis.

Special agent. See appendix B to this subchapter—Special agents.

State means a State of the United States and the District of Columbia and includes a political subdivision of a State.

Texting means manually entering alphanumeric text into, or reading text from, an electronic device.

(1) This action includes, but is not limited to, short message service, emailing, instant messaging, a command or request to access a World Wide Web page, pressing more than a single button to initiate or terminate a voice communication using a mobile tele-

phone, or engaging in any other form of electronic text retrieval or entry, for present or future communication.

(2) Texting does not include:

(i) Inputting, selecting, or reading information on a global positioning system or navigation system; or

(ii) Pressing a single button to initiate or terminate a voice communication using a mobile telephone; or

(iii) Using a device capable of performing multiple functions (*e.g.*, fleet management systems, dispatching devices, smart phones, citizens band radios, music players, etc.) for a purpose that is not otherwise prohibited in this subchapter.

Trailer includes:

(1) Full trailer means any motor vehicle other than a pole trailer which is designed to be drawn by another motor vehicle and so constructed that no part of its weight, except for the towing device, rests upon the self-propelled towing motor vehicle. A semitrailer equipped with an auxiliary front axle (converter dolly) shall be considered a full trailer.

(2) Pole trailer means any motor vehicle which is designed to be drawn by another motor vehicle and attached to the towing motor vehicle by means of a “reach” or “pole,” or by being “boomed” or otherwise secured to the towing motor vehicle, for transporting long or irregularly shaped loads such as poles, pipes, or structural members, which generally are capable of sustaining themselves as beams between the supporting connections.

(3) Semitrailer means any motor vehicle, other than a pole trailer, which is designed to be drawn by another motor vehicle and is constructed so that some part of its weight rests upon the self-propelled towing motor vehicle.

Transportation intermediary means a person who arranges the transportation of property or passengers by commercial motor vehicle in interstate commerce, or who arranges the transportation of hazardous materials by commercial motor vehicle in interstate or intrastate commerce, including but not limited to brokers and freight forwarders.

Truck means any self-propelled commercial motor vehicle except a truck

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tractor, designed and/or used for the transportation of property.

Truck tractor means a self-propelled commercial motor vehicle designed and/or used primarily for drawing other vehicles.

Use a hand-held mobile telephone means:

(1) Using at least one hand to hold a mobile telephone to conduct a voice communication;

(2) Dialing or answering a mobile telephone by pressing more than a single button; or

(3) Reaching for a mobile telephone in a manner that requires a driver to maneuver so that he or she is no longer in a seated driving position, restrained by a seat belt that is installed in accordance with 49 CFR 393.93 and adjusted in accordance with the vehicle manufacturer's instructions.

United States means the 50 States and the District of Columbia.

Veteran operator means an operator of a commercial motor vehicle who is a veteran enrolled in the health care system established under 38 U.S.C. 1705(a).

Written or in writing means printed, handwritten, or typewritten either on paper or other tangible medium, or by any method of electronic documentation that meets the requirements of 49 CFR 390.32.

[82 FR 5311, Jan. 17, 2017, as amended at 83 FR 16226, Apr. 16, 2018; 83 FR 22878, May 17, 2018; 83 FR 24228, May 25, 2018; 83 FR 26860, June 11, 2018; 83 FR 48726, Sept. 27, 2018; 84 FR 40294, Aug. 14, 2019]

§ 390.6 Coercion prohibited.

(a) *Prohibition.* (1) A motor carrier, shipper, receiver, or transportation intermediary, including their respective agents, officers, or representatives, may not coerce a driver of a commercial motor vehicle to operate such vehicle in violation of 49 CFR parts 171–173, 177–180, 380–383 or 390–399, or §§ 385.415 or 385.421;

(2) A motor carrier or its agents, officers, or representatives, may not coerce a driver of a commercial motor vehicle to operate such vehicle in violation of 49 CFR parts 356, 360, or 365–379.

(b) *Complaint process.* (1) A driver who believes he or she was coerced to violate a regulation described in paragraph (a)(1) or (2) of this section may

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file a written complaint under § 386.12(c) of this subchapter.

(2) A complaint under paragraph (b)(1) of this section shall describe the action that the driver claims constitutes coercion and identify the regulation the driver was coerced to violate.

(3) A complaint under paragraph (b)(1) of this section may include any supporting evidence that will assist the Division Administrator in determining the merits of the complaint.

[80 FR 74710, Nov. 30, 2015, as amended at 81 FR 68348, Oct. 4, 2016]

§ 390.7 Rules of construction.

(a) In part 325 of subchapter A and in this subchapter, unless the context requires otherwise:

(1) Words imparting the singular include the plural;

(2) Words imparting the plural include the singular;

(3) Words imparting the present tense include the future tense.

(b) In this subchapter the word—

(1) *Officer* includes any person authorized by law to perform the duties of the office;

(2) *Shall* is used in an imperative sense;

(3) *Must* is used in an imperative sense;

(4) *Should* is used in a recommendatory sense;

(5) *May* is used in a permissive sense; and

(6) *Includes* is used as a word of inclusion, not limitation.

[53 FR 18052, May 19, 1988, as amended at 60 FR 38744, July 28, 1995; 83 FR 16226, Apr. 16, 2018]

Subpart B—General Requirements and Information

§ 390.9 State and local laws, effect on.

Except as otherwise specifically indicated, subchapter B of this chapter is not intended to preclude States or subdivisions thereof from establishing or enforcing State or local laws relating to safety, the compliance with which would not prevent full compliance with these regulations by the person subject thereto.

§ 390.11 Motor carrier to require observance of driver regulations.

Whenever in part 325 of subchapter A or in this subchapter a duty is prescribed for a driver or a prohibition is imposed upon the driver, it shall be the duty of the motor carrier to require observance of such duty or prohibition. If the motor carrier is a driver, the driver shall likewise be bound.

§ 390.13 Aiding or abetting violations.

No person shall aid, abet, encourage, or require a motor carrier or its employees to violate the rules of this chapter.

§ 390.15 Assistance in investigations and special studies.

(a) Each motor carrier and intermodal equipment provider must do the following:

(1) Make all records and information pertaining to an accident available to an authorized representative or special agent of the Federal Motor Carrier Safety Administration, an authorized State or local enforcement agency representative, or authorized third party representative within such time as the request or investigation may specify.

(2) Give an authorized representative all reasonable assistance in the investigation of any accident, including providing a full, true, and correct response to any question of the inquiry.

(b) Motor carriers must maintain an accident register for 3 years after the date of each accident. Information placed in the accident register must contain at least the following:

(1) A list of accidents as defined at § 390.5 of this chapter containing for each accident:

- (i) Date of accident.
- (ii) City or town, or most near, where the accident occurred and the State where the accident occurred.
- (iii) Driver Name.
- (iv) Number of injuries.
- (v) Number of fatalities.
- (vi) Whether hazardous materials, other than fuel spilled from the fuel tanks of motor vehicle involved in the accident, were released.

(2) Copies of all accident reports required by State or other governmental entities or insurers.

(Approved by the Office of Management and Budget under control number 2126-0009)

[69 FR 16719, Mar. 30, 2004, as amended at 73 FR 76821, Dec. 17, 2008; 83 FR 22878, May 17, 2018]

§ 390.16 [Reserved]

§ 390.17 Additional equipment and accessories.

Nothing in this subchapter shall be construed to prohibit the use of additional equipment and accessories, not inconsistent with or prohibited by this subchapter, provided such equipment and accessories do not decrease the safety of operation of the commercial motor vehicles on which they are used.

[53 FR 18052, May 19, 1988, as amended at 60 FR 38744, July 28, 1995. Redesignated at 65 FR 35296, June 2, 2000]

§ 390.19 Motor carrier identification reports for certain Mexico-domiciled motor carriers.

(a) *Applicability.* A Mexico-domiciled motor carrier requesting authority to provide transportation of property or passengers in interstate commerce between Mexico and points in the United States beyond the municipalities and commercial zones along the United States-Mexico international border must file Form MCS-150 with FMCSA as follows:

(b) *Filing schedule.* Each motor carrier must file the appropriate form under paragraph (a) of this section at the following times:

- (1) Before it begins operations; and
- (2) Every 24 months, according to the following schedule:

USDOT No. ending in	Must file by last day of
1	January.
2	February.
3	March.
4	April.
5	May.
6	June.
7	July.
8	August.
9	September.
0	October.

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(3) If the next-to-last digit of its USDOT Number is odd, the motor carrier shall file its update in every odd-numbered calendar year. If the next-to-last digit of the USDOT Number is even, the motor carrier shall file its update in every even-numbered calendar year.

(4) A person that fails to complete biennial updates to the information pursuant to paragraph (b)(2) of this section is subject to the penalties prescribed in 49 U.S.C. 521(b)(2)(B) or 49 U.S.C. 14901(a), as appropriate, and deactivation of its USDOT Number.

(c) *Availability of forms.* The Form MCS–150 and complete instructions are available from the FMCSA Web site at <http://www.fmcsa.dot.gov/urs>; from all FMCSA Service Centers and Division offices nationwide; or by calling 1–800–832–5660.

(d) *Where to file.* The Form MCS–150 must be filed with the FMCSA Office of Registration and Safety Information. The form may be filed electronically according to the instructions at the Agency’s Web site, or it may be sent to Federal Motor Carrier Safety Administration, Office of Registration and Safety Information, MC–RS 1200 New Jersey Avenue SE., Washington, DC 20590.

(e) *Special instructions.* A motor carrier should submit the Form MCS–150 along with its application for operating authority (OP–1(MX)), to the appropriate address referenced on that form, or may submit it electronically or by mail separately to the address mentioned in paragraph (d) of this section.

(f) Only the legal name or a single trade name of the motor carrier may be used on the Form MCS–150.

(g)(1) A motor carrier that fails to file the Form MCS–150 or furnishes misleading information or makes false statements upon the form, is subject to the penalties prescribed in 49 U.S.C. 521(b)(2)(B).

(2) A motor carrier that fails to update the Form MCS–150 as required in paragraph (b) will have its USDOT Number deactivated and will be prohibited from conducting transportation.

(h)(1) Upon receipt and processing of the form described in paragraph (a) of this section, FMCSA will issue the motor carrier or intermodal equipment

provider an identification number (USDOT Number).

(2) A Mexico-domiciled motor carrier seeking to provide transportation of property or passengers in interstate commerce between Mexico and points in the United States beyond the municipalities and commercial zones along the United States-Mexico international border must pass the pre-authorization safety audit under § 365.507 of this subchapter. The Agency will not issue a USDOT Number until expiration of the protest period provided in § 365.115 of this chapter or—if a protest is received—after FMCSA denies or rejects the protest.

(3) The motor carrier must display the USDOT Number on each self-propelled CMV, as defined in § 390.5, along with the additional information required by § 390.21.

[80 FR 63711, Oct. 21, 2015]

EFFECTIVE DATE NOTE: At 82 FR 5316, Jan. 17, 2017, § 390.19 was suspended, effective Jan. 14, 2017.

§ 390.19T Motor carrier, hazardous material safety permit applicant/holder, and intermodal equipment provider identification reports.

(a) *Applicability.* Each motor carrier and intermodal equipment provider must file Form MCS–150, Form MCS–150B or Form MCS–150C with FMCSA as follows:

(1) A U.S.-, Canada-, Mexico-, or non-North America-domiciled motor carrier conducting operations in interstate commerce must file a Motor Carrier Identification Report, Form MCS–150.

(2) A motor carrier conducting operations in intrastate commerce and requiring a Safety Permit under 49 CFR part 385, subpart E, must file the Combined Motor Carrier Identification Report and HM Permit Application, Form MCS–150B.

(3) Each intermodal equipment provider that offers intermodal equipment for transportation in interstate commerce must file an Intermodal Equipment Provider Identification Report, Form MCS–150C.

(b) *Filing schedule.* Each motor carrier or intermodal equipment provider must file the appropriate form under

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paragraph (a) of this section at the following times:

- (1) Before it begins operations; and
- (2) Every 24 months, according to the following schedule:

USDOT No. ending in	Must file by last day of
1	January.
2	February.
3	March.
4	April.
5	May.
6	June.
7	July.
8	August.
9	September.
0	October.

(3) If the next-to-last digit of its USDOT Number is odd, the motor carrier or intermodal equipment provider shall file its update in every odd-numbered calendar year. If the next-to-last digit of the USDOT Number is even, the motor carrier or intermodal equipment provider shall file its update in every even-numbered calendar year.

(4) A person that fails to complete biennial updates to the information pursuant to paragraph (b)(2) of this section is subject to the penalties prescribed in 49 U.S.C. 521(b)(2)(B) or 49 U.S.C. 14901(a), as appropriate, and deactivation of its USDOT Number.

(c) *Availability of forms.* The forms described under paragraph (a) of this section and complete instructions are available from the FMCSA Web site at <http://www.fmcsa.dot.gov> (Keyword "MCS-150," or "MCS-150B," or "MCS-150C"); from all FMCSA Service Centers and Division offices nationwide; or by calling 1-800-832-5660.

(d) *Where to file.* The required form under paragraph (a) of this section must be filed with the FMCSA Office of Registration and Safety Information. The form may be filed electronically according to the instructions at the Agency's Web site, or it may be sent to Federal Motor Carrier Safety Administration, Office of Registration and Safety Information (MC-RS), 1200 New Jersey Avenue SE., Washington, DC 20590.

(e) *Special instructions for for-hire motor carriers.* A for-hire motor carrier should submit the Form MCS-150, or Form MCS-150B, along with its application for operating authority (Form OP-1, OP-1(MX), OP-1(NNA) or OP-2),

to the appropriate address referenced on that form, or may submit it electronically or by mail separately to the address mentioned in paragraph (d) of this section.

(f) Only the legal name or a single trade name of the motor carrier or intermodal equipment provider may be used on the forms under paragraph (a) of this section (Form MCS-150, MCS-150B, or MCS-150C).

(g) A motor carrier or intermodal equipment provider that fails to file the form required under paragraph (a) of this section, or furnishes misleading information or makes false statements upon the form, is subject to the penalties prescribed in 49 U.S.C. 521(b)(2)(B).

(h)(1) Upon receipt and processing of the form described in paragraph (a) of this section, FMCSA will issue the motor carrier or intermodal equipment provider an identification number (USDOT Number).

(2) The following applicants must additionally pass a pre-authorization safety audit as described below before being issued a USDOT Number:

(i) A Mexico-domiciled motor carrier seeking to provide transportation of property or passengers in interstate commerce between Mexico and points in the United States beyond the municipalities and commercial zones along the United States-Mexico international border must pass the pre-authorization safety audit under §365.507T of this subchapter. The Agency will not issue a USDOT Number until expiration of the protest period provided in §365.115 of this subchapter or—if a protest is received—after FMCSA denies or rejects the protest.

(ii) A non-North America-domiciled motor carrier seeking to provide transportation of property or passengers in interstate commerce within the United States must pass the pre-authorization safety audit under §385.607T(c) of this subchapter. The Agency will not issue a USDOT Number until expiration of the protest period provided in §365.115 of this subchapter or—if a protest is received—after FMCSA denies or rejects the protest.

(3) The motor carrier must display the number on each self-propelled CMV, as defined in §390.5T, along with

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the additional information required by § 390.21T.

(4) The intermodal equipment provider must identify each unit of interchanged intermodal equipment by its assigned USDOT number.

(i) A motor carrier that registers its vehicles in a State that participates in the Performance and Registration Information Systems Management (PRISM) program (authorized under section 4004 of the Transportation Equity Act for the 21st Century [Public Law 105-178, 112 Stat. 107]) is exempt from the requirements of this section, provided it files all the required information with the appropriate State office.

[82 FR 5316, Jan. 17, 2017, as amended at 83 FR 22878, May 17, 2018]

§ 390.21 Marking of self-propelled CMVs and intermodal equipment.

(a) *General.* Every self-propelled CMV subject to subchapter B of this chapter must be marked as specified in paragraphs (b), (c), and (d) of this section, and each unit of intermodal equipment interchanged or offered for interchange to a motor carrier by an intermodal equipment provider subject to subchapter B of this chapter must be marked as specified in paragraph (g) of this section.

(b) *Nature of marking.* The marking must display the following information:

(1) The legal name or a single trade name of the motor carrier operating the self-propelled CMV, as listed on the Form MCSA-1, the URS online application, or the motor carrier identification report (Form MCS-150) and submitted in accordance with § 390.201 or § 390.19, as appropriate.

(2) The identification number issued by FMCSA to the motor carrier or intermodal equipment provider, preceded by the letters “USDOT.”

(3) If the name of any person other than the operating carrier appears on the CMV, the name of the operating carrier must be followed by the information required by paragraphs (b)(1), and (2) of this section, and be preceded by the words “operated by.”

(4) Other identifying information may be displayed on the vehicle if it is

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not inconsistent with the information required by this paragraph.

(c) *Size, shape, location, and color of marking.* The marking must—

(1) Appear on both sides of the self-propelled CMV;

(2) Be in letters that contrast sharply in color with the background on which the letters are placed;

(3) Be readily legible, during daylight hours, from a distance of 50 feet (15.24 meters) while the CMV is stationary; and

(4) Be kept and maintained in a manner that retains the legibility required by paragraph (c)(3) of this section.

(d) *Construction and durability.* The marking may be painted on the CMV or may consist of a removable device, if that device meets the identification and legibility requirements of paragraph (c) of this section, and such marking must be maintained as required by paragraph (c)(4) of this section.

(e) *Rented CMVs and leased passenger-carrying CMVs.* A motor carrier operating a self-propelled CMV under a rental agreement or a passenger-carrying CMV under a lease, when the rental agreement or lease has a term not in excess of 30 calendar days, meets the requirements of this section if:

(1) The CMV is marked in accordance with the provisions of paragraphs (b) through (d) of this section; or

(2) Except as provided in paragraph (e)(2)(v) of this section, the CMV is marked as set forth in paragraph (e)(2)(i) through (iv) of this section:

(i) The legal name or a single trade name of the lessor is displayed in accordance with paragraphs (c) and (d) of this section.

(ii) The lessor’s identification number preceded by the letters “USDOT” is displayed in accordance with paragraphs (c) and (d) of this section; and

(iii) The rental agreement or lease as applicable entered into by the lessor and the renting motor carrier or lessee conspicuously contains the following information:

(A) The name and complete physical address of the principal place of business of the renting motor carrier or lessee;

(B) The identification number issued to the renting motor carrier or lessee

by FMCSA, preceded by the letters “USDOT,” if the motor carrier has been issued such a number. In lieu of the identification number required in this paragraph, the following information may be shown in a rental agreement:

(1) Whether the motor carrier is engaged in “interstate” or “intrastate” commerce; and

(2) Whether the renting motor carrier is transporting hazardous materials in the rented CMV;

(C) The sentence: “This lessor cooperates with all Federal, State, and local law enforcement officials nationwide to provide the identity of customers who operate this rental CMV”; and

(iv) The rental agreement or lease as applicable entered into by the lessor and the renting motor carrier or lessee is carried on the rental CMV or leased passenger-carrying CMV during the full term of the rental agreement or lease. See the property-carrying leasing regulations at 49 CFR part 376 and the passenger-carrying leasing regulations at subpart G of this part for information that should be included in all leasing documents.

(v) *Exception.* (A) The passenger-carrying CMV operating under the 48-hour emergency exception pursuant to § 390.403(a)(2) of this part does not need to comply with paragraphs (e)(2)(iii) and (iv) of this section, provided the lessor and lessee comply with the requirements of § 390.403(a)(2).

(B) A motor carrier operating a self-propelled CMV under a lease subject to subpart G of this part (§§ 390.401 and 390.403) must begin complying with this paragraph (e) on January 1, 2021.

(f) *Driveaway services.* In driveaway services, a removable device may be affixed on both sides or at the rear of a single driven vehicle. In a combination driveaway operation, the device may be affixed on both sides of any one unit or at the rear of the last unit. The removable device must display the legal name or a single trade name of the motor carrier and the motor carrier’s USDOT number.

(g) *Intermodal equipment.* (1) The requirements for marking intermodal equipment apply to each intermodal equipment provider, as defined in

§ 390.5, that interchanges or offers for interchange intermodal equipment to a motor carrier.

(2) Each unit of intermodal equipment interchanged or offered for interchange to a motor carrier by an intermodal equipment provider subject to subchapter B of this chapter must identify the intermodal equipment provider.

(3) The intermodal equipment provider must be identified by its legal name or a single trade name and the identification number issued by FMCSA, preceded by the letters “USDOT.”

(4) The intermodal equipment must be identified as follows, using any one of the following methods:

(i) The identification marking must appear on the curb side of the item of equipment. It must be in letters that contrast sharply in color with the background on which the letters are placed. The letters must be readily legible, during daylight hours, from a distance of 50 feet (15.24 meters) while the CMV is stationary; and be kept and maintained in a manner that retains this legibility; or

(ii) The identification marking must appear on a label placed upon the curb side of the item of equipment. The label must be readily visible and legible to an inspection official during daylight hours when the vehicle is stationary. The label must be a color that contrasts sharply with the background on which it is placed, and the letters must also contrast sharply in color with the background of the label. The label must be kept and maintained in a manner that retains this legibility; or

(iii) The USDOT number of the intermodal equipment provider must appear on the interchange agreement so that it is clearly identifiable to an inspection official. The interchange agreement must include additional information to identify the specific item of intermodal equipment (such as the Vehicle Identification Number (VIN) and 4-character Standard Carrier Alpha Code (SCAC) code and 6-digit unique identifying number); or

(iv) The identification marking must be shown on a document placed in a weathertight compartment affixed to the frame of the item of intermodal

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equipment. The color of the letters used in the document must contrast sharply in color with the background of the document. The document must include additional information to identify the specific item of intermodal equipment (such as the VIN and 4-character SCAC code and 6-digit unique identifying number).

(v) The USDOT number of the intermodal equipment provider is maintained in a database that is available via real-time internet and telephonic access. The database must:

(A) Identify the name and USDOT number of the intermodal equipment provider responsible for the intermodal equipment, in response to an inquiry that includes:

- (i) SCAC plus trailing digits, or
- (ii) License plate number and State of license, or
- (iii) VIN of the item of intermodal equipment.

(B) Offer read-only access for inquiries on individual items of intermodal equipment, without requiring advance user registration, a password, or a usage fee.

[65 FR 35296, June 2, 2000, as amended at 73 FR 76821, Dec. 17, 2008; 74 FR 68708, Dec. 29, 2009; 77 FR 59827, Oct. 1, 2012; 78 FR 58482, Sept. 24, 2013; 80 FR 30178, May 27, 2015; 80 FR 63712, Oct. 21, 2015; 84 FR 40294, Aug. 14, 2019]

EFFECTIVE DATE NOTE: At 82 FR 5316, Jan. 17, 2017, § 390.21 was suspended, effective Jan. 14, 2017. At 84 FR 40294, Aug. 14, 2019, the suspension was lifted and amendments were made to § 390.21. In that same document, § 390.21 was again suspended indefinitely.

§ 390.21T Marking of self-propelled CMVs and intermodal equipment.

(a) *General.* Every self-propelled CMV subject to this subchapter must be marked as specified in paragraphs (b), (c), and (d) of this section, and each unit of intermodal equipment interchanged or offered for interchange to a motor carrier by an intermodal equipment provider subject to this subchapter must be marked as specified in paragraph (g) of this section.

(b) *Nature of marking.* The marking must display the following information:

(1) The legal name or a single trade name of the motor carrier operating the self-propelled CMV, as listed on the motor carrier identification report

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(Form MCS–150) and submitted in accordance with § 390.19T.

(2) The identification number issued by FMCSA to the motor carrier or intermodal equipment provider, preceded by the letters “USDOT.”

(3) If the name of any person other than the operating carrier appears on the CMV, the name of the operating carrier must be followed by the information required by paragraphs (b)(1) and (2) of this section, and be preceded by the words “operated by.”

(4) Other identifying information may be displayed on the vehicle if it is not inconsistent with the information required by this paragraph (b).

(c) *Size, shape, location, and color of marking.* The marking must—

(1) Appear on both sides of the self-propelled CMV;

(2) Be in letters that contrast sharply in color with the background on which the letters are placed;

(3) Be readily legible, during daylight hours, from a distance of 50 feet (15.24 meters) while the CMV is stationary; and

(4) Be kept and maintained in a manner that retains the legibility required by paragraph (c)(3) of this section.

(d) *Construction and durability.* The marking may be painted on the CMV or may consist of a removable device, if that device meets the identification and legibility requirements of paragraph (c) of this section, and such marking must be maintained as required by paragraph (c)(4) of this section.

(e) *Rented CMVs and leased passenger-carrying CMVs.* A motor carrier operating a self-propelled CMV under a rental agreement or a passenger-carrying CMV under a lease, when the rental agreement or lease has a term not in excess of 30 calendar days, meets the requirements of this section if:

(1) The CMV is marked in accordance with the provisions of paragraphs (b) through (d) of this section; or

(2) Except as provided in paragraph (e)(2)(v) of this section, the CMV is marked as set forth in paragraph (e)(2)(i) through (iv) of this section:

(i) The legal name or a single trade name of the lessor is displayed in accordance with paragraphs (c) and (d) of this section.

(ii) The lessor's identification number preceded by the letters "USDOT" is displayed in accordance with paragraphs (c) and (d) of this section; and

(iii) The rental agreement or lease as applicable entered into by the lessor and the renting motor carrier or lessee conspicuously contains the following information:

(A) The name and complete physical address of the principal place of business of the renting motor carrier or lessee;

(B) The identification number issued to the renting motor carrier or lessee by FMCSA, preceded by the letters "USDOT," if the motor carrier has been issued such a number. In lieu of the identification number required in this paragraph, the following information may be shown in a rental agreement:

(1) Whether the motor carrier is engaged in "interstate" or "intrastate" commerce; and

(2) Whether the renting motor carrier or lessee is transporting hazardous materials in the rented or leased CMV;

(C) The sentence: "This lessor cooperates with all Federal, State, and local law enforcement officials nationwide to provide the identity of customers who operate this rental or leased CMV"; and

(iv) The rental agreement or lease as applicable entered into by the lessor and the renting motor carrier or lessee is carried on the rental CMV or leased passenger-carrying CMV during the full term of the rental agreement or lease. See the property-carrying leasing regulations at 49 CFR part 376 and the passenger-carrying leasing regulations at subpart G of this part for information that should be included in all leasing documents.

(v) *Exception.* (A) A passenger-carrying CMV operating under the 48-hour emergency exception pursuant to § 390.403(a)(2) of this part does not need to comply with paragraphs (e)(2)(iii) and (iv) of this section, provided the lessor and lessee comply with the requirements of § 390.403(a)(2).

(B) A motor carrier operating a self-propelled CMV under a lease subject to subpart G of this part (§§ 390.401 and 390.403) must begin complying with this paragraph (e) on January 1, 2021.

(f) *Driveaway services.* In driveaway services, a removable device may be affixed on both sides or at the rear of a single driven vehicle. In a combination driveaway operation, the device may be affixed on both sides of any one unit or at the rear of the last unit. The removable device must display the legal name or a single trade name of the motor carrier and the motor carrier's USDOT number.

(g) *Intermodal equipment.* (1) The requirements for marking intermodal equipment apply to each intermodal equipment provider, as defined in § 390.5T, that interchanges or offers for interchange intermodal equipment to a motor carrier.

(2) Each unit of intermodal equipment interchanged or offered for interchange to a motor carrier by an intermodal equipment provider subject to this subchapter must identify the intermodal equipment provider.

(3) The intermodal equipment provider must be identified by its legal name or a single trade name and the identification number issued by FMCSA, preceded by the letters "USDOT."

(4) The intermodal equipment must be identified as follows, using any one of the following methods:

(i) The identification marking must appear on the curb side of the item of equipment. It must be in letters that contrast sharply in color with the background on which the letters are placed. The letters must be readily legible, during daylight hours, from a distance of 50 feet (15.24 meters) while the CMV is stationary; and be kept and maintained in a manner that retains this legibility; or

(ii) The identification marking must appear on a label placed upon the curb side of the item of equipment. The label must be readily visible and legible to an inspection official during daylight hours when the vehicle is stationary. The label must be a color that contrasts sharply with the background on which it is placed, and the letters must also contrast sharply in color with the background of the label. The label must be kept and maintained in a manner that retains this legibility; or

(iii) The USDOT number of the intermodal equipment provider must appear

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on the interchange agreement so that it is clearly identifiable to an inspection official. The interchange agreement must include additional information to identify the specific item of intermodal equipment (such as the Vehicle Identification Number (VIN) and 4-character Standard Carrier Alpha Code (SCAC) code and 6-digit unique identifying number); or

(iv) The identification marking must be shown on a document placed in a weathertight compartment affixed to the frame of the item of intermodal equipment. The color of the letters used in the document must contrast sharply in color with the background of the document. The document must include additional information to identify the specific item of intermodal equipment (such as the VIN and 4-character SCAC code and 6-digit unique identifying number).

(v) The USDOT number of the intermodal equipment provider is maintained in a database that is available via real-time internet and telephonic access. The database must:

(A) Identify the name and USDOT number of the intermodal equipment provider responsible for the intermodal equipment, in response to an inquiry that includes:

(i) SCAC plus trailing digits; or

(ii) License plate number and State of license; or

(iii) VIN of the item of intermodal equipment.

(B) Offer read-only access for inquiries on individual items of intermodal equipment, without requiring advance user registration, a password, or a usage fee.

[82 FR 5316, Jan. 17, 2017, as amended at 84 FR 40294, Aug. 14, 2019]

§ 390.23 Relief from regulations.

(a) Parts 390 through 399 of this chapter shall not apply to any motor carrier or driver operating a commercial motor vehicle to provide emergency relief during an emergency, subject to the following time limits:

(1) *Regional emergencies.* (i) The exemption provided by paragraph (a)(1) of this section is effective only when:

(A) An emergency has been declared by the President of the United States, the Governor of a State, or their au-

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thorized representatives having authority to declare emergencies; or

(B) The FMCSA Field Administrator has declared that a regional emergency exists which justifies an exemption from parts 390 through 399 of this chapter.

(ii)(A) Except as provided in paragraph (a)(1)(ii)(B) of this section and § 390.25, the exemption shall not exceed the duration of the motor carrier's or driver's direct assistance in providing emergency relief, or 30 days from the date of the initial declaration of the emergency or the exemption from the regulations by the FMCSA Field Administrator, whichever is less.

(B) If a Governor who declares an emergency caused by a shortage of residential heating fuel (namely heating oil, natural gas, and propane), subsequently determines at the end of the 30-day period immediately following the declaration that the emergency shortage has not ended, and extends the declaration of an emergency for up to 2 additional 30-day periods, this exemption shall remain in effect up to the end of such additional periods, not to exceed 60 additional days, for a motor carrier or driver providing residential heating fuel in the geographic area designated by the Governor's declaration of emergency.

(2) *Local emergencies.* (i) The exemption provided by paragraph (a)(2) of this section is effective only when:

(A) An emergency has been declared by a Federal, State or local government official having authority to declare an emergency; or

(B) The FMCSA Field Administrator has declared that a local emergency exists which justifies an exemption from parts 390 through 399 of this chapter.

(ii) This exemption shall not exceed the duration of the motor carrier's or driver's direct assistance in providing emergency relief, or 5 days from the date of the initial declaration of the emergency or the exemption from the regulations by the FMCSA Field Administrator, whichever is less.

(3) *Tow trucks responding to emergencies.* (i) The exemption provided by paragraph (a)(3) of this section is effective only when a request has been made

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by a Federal, State or local police officer for tow trucks to move wrecked or disabled motor vehicles.

(ii) This exemption shall not exceed the length of the motor carrier's or driver's direct assistance in providing emergency relief, or 24 hours from the time of the initial request for assistance by the Federal, State or local police officer, whichever is less.

(b) Upon termination of direct assistance to the regional or local emergency relief effort, the motor carrier or driver is subject to the requirements of parts 390 through 399 of this chapter, with the following exception: A driver may return empty to the motor carrier's terminal or the driver's normal work reporting location without complying with parts 390 through 399 of this chapter. However, a driver who informs the motor carrier that he or she needs immediate rest must be permitted at least 10 consecutive hours off duty before the driver is required to return to such terminal or location. Having returned to the terminal or other location, the driver must be relieved of all duty and responsibilities. Direct assistance terminates when a driver or commercial motor vehicle is used in interstate commerce to transport cargo not destined for the emergency relief effort, or when the motor carrier dispatches such driver or commercial motor vehicle to another location to begin operations in commerce.

(c) When the driver has been relieved of all duty and responsibilities upon termination of direct assistance to a regional or local emergency relief ef-

fort, no motor carrier shall permit or require any driver used by it to drive nor shall any such driver drive in commerce until the driver has met the requirements of §§395.3(a) and (c) and 395.5(a) of this chapter.

[57 FR 33647, July 30, 1992, as amended at 60 FR 38744, July 28, 1995; 68 FR 22514, Apr. 28, 2003; 70 FR 50070, Aug. 25, 2005; 76 FR 81186, Dec. 27, 2011; 79 FR 63059, Oct. 22, 2014]

§ 390.25 Extension of relief from regulations—emergencies.

The FMCSA Field Administrator may extend the 30-day time period of the exemption contained in §390.23(a)(1), but not the 5-day time period contained in §390.23(a)(2) or the 24-hour period contained in §390.23(a)(3). Any motor carrier or driver seeking to extend the 30-day limit shall obtain approval from the FMCSA Field Administrator in the region in which the motor carrier's principal place of business is located before the expiration of the 30-day period. The motor carrier or driver shall give full details of the additional relief requested. The FMCSA Field Administrator shall determine if such relief is necessary taking into account both the severity of the ongoing emergency and the nature of the relief services to be provided by the carrier or driver. If the FMCSA Field Administrator approves an extension of the exemption, he or she shall establish a new time limit and place on the motor carrier or driver any other restrictions deemed necessary.

[57 FR 33647, July 30, 1992]

§ 390.27 Locations of motor carrier safety service centers.

Service center	Territory included	Location of office
Eastern	Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, United States Virgin Islands, Vermont, Virginia, West Virginia.	31 Hopkins Plaza, Suite 800, Baltimore, Maryland 21201.
Midwestern	Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, Ohio, Wisconsin.	4749 Lincoln Mall Drive, Suite 300A, Matteson, Illinois 60443.
Southern	Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee.	1800 Century Boulevard, Suite 1700, Atlanta, Georgia 30345-3220.
Western	Alaska, American Samoa, Arizona, California, Colorado, Guam, Hawaii, Idaho, Mariana Islands, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Texas, Utah, Washington, Wyoming.	12600 West Colfax Avenue, Suite B-300, Lakewood, Colorado 80215.

Note 1: Canadian carriers—for information regarding proper service center, contact an FMCSA division (State) office in Alaska, Maine, Michigan, Montana, New York, North Dakota, Vermont, or Washington.

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Note 2: Mexican carriers are handled through the four southern border divisions and the Western Service Center. For information regarding the proper service center, contact an FMCSA division (State) office in Arizona, California, New Mexico, or Texas.

[83 FR 22878, May 17, 2018]

§ 390.29 Location of records or documents.

(a) A motor carrier with multiple offices or terminals may maintain the records and documents required by this subchapter at its principal place of business, a regional office, or driver work-reporting location unless otherwise specified in this subchapter.

(b) All records and documents required by this subchapter which are maintained at a regional office or driver work-reporting location shall be made available for inspection upon request by a special agent or authorized representative of the Federal Motor Carrier Safety Administration at the motor carrier's principal place of business or other location specified by the agent or representative within 48 hours after a request is made. Saturdays, Sundays, and Federal holidays are excluded from the computation of the 48-hour period of time.

[63 FR 33276, June 18, 1998]

§ 390.31 Copies of records and documents.

All records and documents required to be maintained under this subchapter must be maintained for the periods specified. Except as otherwise provided, copies that are legible and accurately reflect the information required to be contained in the record or document may be maintained in lieu of originals.

[83 FR 16226, Apr. 16, 2018]

§ 390.32 Electronic documents and signatures.

(a) *Applicability.* This section applies to documents that entities or individuals are required to retain, regardless of whether FMCSA subsequently requires them to be produced or displayed to FMCSA staff or other parties entitled to access. This section does not apply to documents that must be submitted directly to FMCSA.

(b) *Electronic records or documents.* Any person or entity required to generate, maintain, or exchange docu-

ments to satisfy requirements in chapter III of subtitle B of title 49, Code of Federal Regulations (49 CFR 300–399) may use electronic methods to satisfy those requirements.

(c) *Electronic signatures.* (1) Any person or entity required to sign or certify a document to satisfy the requirements of chapter III of subtitle B of title 49, Code of Federal Regulations (49 CFR parts 300–399) may use an electronic signature, as defined in § 390.5T of this part.

(2) An electronic signature may be made using any available technology that otherwise satisfies FMCSA's requirements.

(d) *Requirements.* Any person or entity may use documents signed, certified, generated, maintained, or exchanged using electronic methods if the documents accurately reflect the information otherwise required to be contained in them. Records, documents or signatures generated, maintained, or exchanged using electronic methods do not satisfy the requirements of this section if they are not capable of being retained, are not used for the purpose for which they were created, or cannot be accurately reproduced within required timeframes for reference by any party entitled to access. Records or documents generated electronically do not satisfy the requirements of this section if they do not include proof of consent to use electronically generated records or documents, as required by 15 U.S.C. 7001(c).

[83 FR 16226, Apr. 16, 2018]

§ 390.33 Commercial motor vehicles used for purposes other than defined.

Whenever a commercial motor vehicle of one type is used to perform the functions normally performed by a commercial motor vehicle of another type, the requirements of this subchapter and part 325 of subchapter A shall apply to the commercial motor vehicle and to its operation in the same manner as though the commercial motor vehicle were actually a

commercial motor vehicle of the latter type. *Example:* If a commercial motor vehicle other than a bus is used to perform the functions normally performed by a bus, the regulations pertaining to buses and to the transportation of passengers shall apply to that commercial motor vehicle.

[53 FR 18052, May 19, 1988, as amended at 60 FR 38744, July 28, 1995]

§ 390.35 Certificates, reports, and records: Falsification, reproduction, or alteration.

No motor carrier, its agents, officers, representatives, or employees shall make or cause to make—

(a) A fraudulent or intentionally false statement on any application, certificate, report, or record required by part 325 of subchapter A or this subchapter;

(b) A fraudulent or intentionally false entry on any application, certificate, report, or record required to be used, completed, or retained, to comply with any requirement of this subchapter or part 325 of subchapter A; or

(c) A reproduction, for fraudulent purposes, of any application, certificate, report, or record required by this subchapter or part 325 of subchapter A.

§ 390.36 Harassment of drivers prohibited.

(a) *Harass or harassment defined.* As used in this section, harass or harassment means an action by a motor carrier toward a driver employed by the motor carrier (including an independent contractor while in the course of operating a commercial motor vehicle on behalf of the motor carrier) involving the use of information available to the motor carrier through an ELD, as defined in §395.2 of this chapter, or through other technology used in combination with and not separable from the ELD, that the motor carrier knew, or should have known, would result in the driver violating §392.3 or part 395 of this subchapter.

(b) *Prohibition against harassment.* (1) No motor carrier may harass a driver.

(2) Nothing in paragraph (b)(1) of this section shall be construed to prevent a motor carrier from using technology allowed under this subchapter to monitor productivity of a driver provided

that such monitoring does not result in harassment.

(c) *Complaint process.* A driver who believes he or she was the subject of harassment by a motor carrier may file a written complaint under §386.12(b) of this subchapter.

[80 FR 78383, Dec. 16, 2015]

§ 390.37 Violation and penalty.

Any person who violates the rules set forth in this subchapter or part 325 of subchapter A may be subject to civil or criminal penalties.

§ 390.38 Exemptions for pipeline welding trucks.

(a) *Federal requirements.* A pipeline welding truck, as defined in paragraph (b) of this section, including the individuals operating such vehicle and the employer of such individual, is exempt from the following:

(1) Any requirement relating to registration as a motor carrier, including the requirement to obtain and display a Department of Transportation number, in 49 CFR part 365 or 390.

(2) Any requirement relating to driver qualifications in 49 CFR part 391.

(3) Any requirement relating to driving of commercial motor vehicles in 49 CFR part 392.

(4) Any requirement relating to parts and accessories and inspection, repair, and maintenance of commercial motor vehicles in 49 CFR parts 393 and 396.

(5) Any requirement relating to hours of service of drivers, including maximum driving and on duty time, found in 49 CFR part 395.

(b) *Definition.* “Pipeline welding truck” means a motor vehicle that is travelling in the State in which the vehicle is registered or another State, is owned by a welder, is a pick-up style truck, is equipped with a welding rig that is used in the construction or maintenance of pipelines, and has a gross vehicle weight and combination weight rating and weight of 15,000 pounds or less.

[81 FR 47720, July 22, 2016]

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§ 390.39 Exemptions for “covered farm vehicles.”

(a) *Federal requirements.* A covered farm vehicle, as defined in § 390.5, including the individual operating that vehicle, is exempt from the following:

(1) Any requirement relating to commercial driver’s licenses in 49 CFR Part 383 or controlled substances and alcohol use and testing in 49 CFR Part 382;

(2) Any requirement in 49 CFR Part 391, Subpart E, Physical Qualifications and Examinations.

(3) Any requirement in 49 CFR Part 395, Hours of Service of Drivers.

(4) Any requirement in 49 CFR Part 396, Inspection, Repair, and Maintenance.

(b) *State requirements*—(1) *In general.* Federal transportation funding to a State may not be terminated, limited, or otherwise interfered with as a result of the State exempting a covered farm vehicle, including the individual operating that vehicle, from—

(i) A requirement described in paragraph (a) of this section; or

(ii) Any other minimum standard provided by a State relating to the operation of that vehicle.

(2) *Exception.* Paragraph (b)(1) of this section does not apply with respect to a covered farm vehicle transporting hazardous materials that require a placard.

(c) *Other exemptions and exceptions.* The exemptions in paragraphs (a) and (b) of this section are in addition to, not in place of, the agricultural exemptions and exceptions in §§ 383.3(d)(1), 383.3(e), 383.3(f), 391.2(a), 391.2(b), 391.2(c), 391.67, 395.1(e)(1), 395.1(e)(2), 395.1(h), 395.1(i), and 395.1(k) of this chapter. Motor carriers and drivers may utilize any combination of these exemptions and exceptions, providing they comply fully with each separate exemption and exception.

[78 FR 16194, Mar. 14, 2013, as amended at 81 FR 47720, July 22, 2016]

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Subpart C—Requirements and Information for Intermodal Equipment Providers and for Motor Carriers Operating Intermodal Equipment

SOURCE: 73 FR 76822, Dec. 17, 2008, unless otherwise noted.

§ 390.40 What responsibilities do intermodal equipment providers have under the Federal Motor Carrier Safety Regulations (49 CFR parts 350–399)?

An intermodal equipment provider must—

(a) Identify its operations to the FMCSA by filing the Form MCSA–1 required by § 390.201.

(b) Mark its intermodal equipment with the USDOT number as required by § 390.21 before tendering the equipment to a motor carrier.

(c) Systematically inspect, repair, and maintain, or cause to be systematically inspected, repaired, and maintained, in a manner consistent with § 396.3(a)(1), as applicable, all intermodal equipment intended for interchange with a motor carrier.

(d) Provide intermodal equipment intended for interchange that is in safe and proper operating condition.

(e) Maintain a system of driver vehicle inspection reports submitted to the intermodal equipment provider as required by § 396.11 of this chapter.

(f) Maintain a system of inspection, repair, and maintenance records as required by § 396.3(b)(3) of this chapter for equipment intended for interchange with a motor carrier.

(g) Periodically inspect equipment intended for interchange, as required under § 396.17 of this chapter.

(h) At facilities at which the intermodal equipment provider makes intermodal equipment available for interchange, have procedures in place, and provide sufficient space, for drivers to perform a pre-trip inspection of tendered intermodal equipment.

(i) At facilities at which the intermodal equipment provider makes intermodal equipment available for interchange, develop and implement procedures to repair any equipment damage, defects, or deficiencies identified as part of a pre-trip inspection, or

replace the equipment, prior to the driver's departure. The repairs or replacement must be made after being notified by a driver of such damage, defects, or deficiencies.

(j) Refrain from placing intermodal equipment in service on the public highways if that equipment has been found to pose an imminent hazard, as defined in § 386.72(b)(3) of this chapter.

[73 FR 76822, Dec. 17, 2008, as amended at 74 FR 68708, Dec. 29, 2009; 78 FR 58483, Sept. 24, 2013; 79 FR 59457, Oct. 2, 2014; 80 FR 63712, Oct. 21, 2015]

EFFECTIVE DATE NOTE: At 82 FR 5318, Jan. 17, 2017, § 390.40 was suspended, effective Jan. 14, 2017.

§ 390.40T What responsibilities do intermodal equipment providers have under the Federal Motor Carrier Safety Regulations (49 CFR parts 350 through 399)?

An intermodal equipment provider must—

(a) Identify its operations to the FMCSA by filing the Form MCS-150C required by § 390.19T.

(b) Mark its intermodal equipment with the USDOT number as required by § 390.21T before tendering the equipment to a motor carrier.

(c) Systematically inspect, repair, and maintain, or cause to be systematically inspected, repaired, and maintained, in a manner consistent with § 396.3(a)(1) of this chapter, as applicable, all intermodal equipment intended for interchange with a motor carrier.

(d) Provide intermodal equipment intended for interchange that is in safe and proper operating condition.

(e) Maintain a system of driver vehicle inspection reports submitted to the intermodal equipment provider as required by § 396.11 of this chapter.

(f) Maintain a system of inspection, repair, and maintenance records as required by § 396.3(b)(3) of this chapter for equipment intended for interchange with a motor carrier.

(g) Periodically inspect equipment intended for interchange, as required under § 396.17 of this chapter.

(h) At facilities at which the intermodal equipment provider makes intermodal equipment available for interchange, have procedures in place, and provide sufficient space, for drivers

to perform a pre-trip inspection of tendered intermodal equipment.

(i) At facilities at which the intermodal equipment provider makes intermodal equipment available for interchange, develop and implement procedures to repair any equipment damage, defects, or deficiencies identified as part of a pre-trip inspection, or replace the equipment, prior to the driver's departure. The repairs or replacement must be made after being notified by a driver of such damage, defects, or deficiencies.

(j) Refrain from placing intermodal equipment in service on the public highways if that equipment has been found to pose an imminent hazard, as defined in § 386.72(b)(3) of this chapter.

[82 FR 5318, Jan. 17, 2017]

§ 390.42 What are the responsibilities of drivers and motor carriers operating intermodal equipment?

(a) Before operating intermodal equipment over the road, the driver accepting the equipment must inspect the equipment components listed in § 392.7(b) of this subchapter and be satisfied they are in good working order.

(b) A driver or motor carrier transporting intermodal equipment must report to the intermodal equipment provider, or its designated agent, any known damage, defects, or deficiencies in the intermodal equipment at the time the equipment is returned to the provider or the provider's designated agent. The report must include, at a minimum, the items in § 396.11(b)(1) of this chapter.

[73 FR 76822, Dec. 17, 2008, as amended at 77 FR 34852, June 12, 2012; 77 FR 59828, Oct. 1, 2012; 80 FR 59074, Oct. 1, 2015]

§ 390.44 What are the procedures to correct the safety record of a motor carrier or an intermodal equipment provider?

(a) *An intermodal equipment provider or its agent* may electronically file questions or concerns at <http://dataqs.fmcsa.dot.gov> about Federal and State data that reference the provider. This includes safety violations alleging that the components, parts, or accessories of intermodal chassis or trailers listed in § 392.7(b) of this chapter were

not in good working order when inspected at roadside. An intermodal equipment provider should not be held responsible for such violations because a motor carrier indicated pursuant to §392.7(b) that these components, parts, or accessories had no safety defects at the time of the pre-trip inspection.

(b) *A motor carrier or its agent* may electronically file questions or concerns at <http://dataqs.fmcsa.dot.gov> about Federal and State data that reference the motor carrier. This includes safety violations alleging that any components, parts, or accessories of intermodal chassis or trailers, except those listed in §392.7(b) of this chapter, were not in good working order when inspected at roadside. Such violations will not be used by FMCSA in making a safety fitness determination of a motor carrier (unless there is evidence that the driver or motor carrier caused or substantially contributed to the violations) because the driver could not readily detect these violations during a pre-trip inspection performed in accordance with §392.7(b).

(c) *An intermodal equipment provider, or its agent,* may request FMCSA to investigate a motor carrier believed to be in noncompliance with responsibilities under 49 U.S.C. 31151 or the implementing regulations in this subchapter regarding interchange of intermodal equipment by contacting the appropriate FMCSA Field Office.

(d) *A motor carrier or its agent* may request FMCSA to investigate an intermodal equipment provider believed to be in noncompliance with responsibilities under 49 U.S.C. 31151 or the implementing regulations in this subchapter regarding interchange of intermodal equipment by contacting the appropriate FMCSA Field Office.

§390.46 Are State and local laws and regulations on the inspection, repair, and maintenance of intermodal equipment preempted by the Federal Motor Carrier Safety Regulations?

(a) *General.* As provided by 49 U.S.C. 31151(d), a law, regulation, order, or other requirement of a State, a political subdivision of a State, or a tribal organization relating to the inspection, repair, and maintenance of intermodal equipment is preempted if such law,

regulation, order, or other requirement exceeds or is inconsistent with a requirement imposed by the Federal Motor Carrier Safety Regulations.

(b) *Pre-existing State requirements—(1) In general.* Pursuant to 49 U.S.C. 31151(e)(1), unless otherwise provided in paragraph (b)(2) of this section, a State requirement for the periodic inspection of intermodal chassis by intermodal equipment providers that was in effect on January 1, 2005, shall remain in effect only until June 17, 2009.

(2) *Nonpreemption determinations—(i) In general.* Pursuant to 49 U.S.C. 31151(e)(2), and notwithstanding paragraph (a) of this section, a State requirement described in paragraph (b)(1) of this section is not preempted if the Administrator determines that the State requirement is as effective as the FMCSA final rule and does not unduly burden interstate commerce.

(ii) *Application required.* Paragraph (b)(2)(i) of this section applies to a State requirement only if the State applies to the Administrator for a determination with respect to the requirement before the effective date of the final rule (June 17, 2009). The Administrator will make a determination with respect to any such application within 6 months after the date on which the Administrator receives the application.

(iii) *Amended State requirements.* If a State amends a regulation for which it previously received a nonpreemption determination from the Administrator under paragraph (b)(2)(i) of this section, it must apply for a determination of nonpreemption for the amended regulation. Any amendment to a State requirement not preempted under this subsection because of a determination by the Administrator may not take effect unless it is submitted to the Agency before the effective date of the amendment, and the Administrator determines that the amendment would not cause the State requirement to be less effective than the FMCSA final rule on “Requirements for Intermodal Equipment Providers and Motor Carriers and Drivers Operating Intermodal Equipment” and would not unduly burden interstate commerce.

Subpart D—National Registry of Certified Medical Examiners

SOURCE: 77 FR 24127, Apr. 20, 2012, unless otherwise noted.

§ 390.101 Scope.

(a) The rules in this subpart establish the minimum qualifications for FMCSA certification of a medical examiner and for listing the examiner on FMCSA's National Registry of Certified Medical Examiners. The National Registry of Certified Medical Examiners is designed to improve highway safety and operator health by requiring that medical examiners be trained and certified to determine effectively whether an operator meets FMCSA physical qualification standards under part 391 of this chapter. One component of the National Registry is the registry itself, which is a national database of names and contact information for medical examiners who are certified by FMCSA to perform medical examinations of operators.

(b) A qualified VA examiner, as defined in either § 390.5 or § 390.5T, may be listed on the National Registry of Certified Medical Examiners by satisfying the requirements for medical examiner certification set forth in either § 390.103 or § 390.123.

[83 FR 26860, June 11, 2018]

MEDICAL EXAMINER CERTIFICATION REQUIREMENTS

§ 390.103 Eligibility requirements for medical examiner certification.

(a) To receive medical examiner certification from FMCSA, a person must:

(1) Be licensed, certified, or registered in accordance with applicable State laws and regulations to perform physical examinations. The applicant must be an advanced practice nurse, doctor of chiropractic, doctor of medicine, doctor of osteopathy, physician assistant, or other medical professional authorized by applicable State laws and regulations to perform physical examinations.

(2) Register on the National Registry website and receive a National Registry number before taking the train-

ing that meets the requirements of § 390.105.

(3) Complete a training program that meets the requirements of § 390.105.

(4) Pass the medical examiner certification test provided by FMCSA and administered by a testing organization that meets the requirements of § 390.107 and that has electronically forwarded to FMCSA the applicant's completed test information no more than 3 years after completion of the training program required by paragraph (a)(3) of this section.

(b) If a person has medical examiner certification from FMCSA, then to renew such certification the medical examiner must remain qualified under paragraph (a)(1) of this section and complete additional testing and training as required by § 390.111(a)(5).

[77 FR 24127, Apr. 20, 2012, as amended at 83 FR 26860, June 11, 2018]

§ 390.105 Medical examiner training programs.

An applicant for medical examiner certification must complete a training program that:

(a) Is conducted by a training provider that:

(1) Is accredited by a nationally recognized medical profession accrediting organization to provide continuing education units; and

(2) Meets the following administrative requirements:

(i) Provides training participants with proof of participation.

(ii) Provides FMCSA point of contact information to training participants.

(b) Provides training to medical examiners on the following topics:

(1) Background, rationale, mission, and goals of the FMCSA medical examiner's role in reducing crashes, injuries, and fatalities involving commercial motor vehicles.

(2) Familiarization with the responsibilities and work environment of commercial motor vehicle operation.

(3) Identification of the operator and obtaining, reviewing, and documenting operator medical history, including prescription and over-the-counter medications.

(4) Performing, reviewing, and documenting the operator's medical examination.

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(5) Performing, obtaining, and documenting additional diagnostic tests or medical opinion from a medical specialist or treating physician.

(6) Informing and educating the operator about medications and non-disqualifying medical conditions that require remedial care.

(7) Determining operator certification outcome and period for which certification should be valid.

(8) FMCSA reporting and documentation requirements.

Guidance on the core curriculum specifications for use by training providers is available from FMCSA.

§ 390.107 Medical examiner certification testing.

An applicant for medical examiner certification or recertification must apply, in accordance with the minimum specifications for application elements established by FMCSA, to a testing organization that meets the following criteria:

(a) The testing organization has documented policies and procedures that:

(1) Use secure protocols to access, process, store, and transmit all test items, test forms, test data, and candidate information and ensure access by authorized personnel only.

(2) Ensure testing environments are reasonably comfortable and have minimal distractions.

(3) Prevent to the greatest extent practicable the opportunity for a test taker to attain a passing score by fraudulent means.

(4) Ensure that test center staff who interact with and proctor examinees or provide technical support have completed formal training, demonstrate competency, and are monitored periodically for quality assurance in testing procedures.

(5) Accommodate testing of individuals with disabilities or impairments to minimize the effect of the disabilities or impairments while maintaining the security of the test and data.

(b) Testing organizations that offer testing of examinees not at locations that are operated and staffed by the organizations but by means of remote, computer-based systems must, in addition to the requirements of paragraph

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(a) of this section, ensure that such systems:

(1) Provide a means to authenticate the identity of the person taking the test.

(2) Provide a means for the testing organization to monitor the activity of the person taking the test.

(3) Do not allow the person taking the test to reproduce or record the contents of the test by any means.

(c) The testing organization has submitted its documented policies and procedures as defined in paragraph (a) of this section and, if applicable, paragraph (b) of this section to FMCSA and agreed to future reviews by FMCSA to ensure compliance with the criteria listed in this section.

(d) The testing organization administers only the currently authorized version of the medical examiner certification test developed and furnished by FMCSA.

[77 FR 24127, Apr. 20, 2012, as amended at 78 FR 58483, Sept. 24, 2013]

§ 390.109 Issuance of the FMCSA medical examiner certification credential.

Upon compliance with the requirements of § 390.103(a) or (b), FMCSA will issue to a medical examiner applicant an FMCSA medical examiner certification credential and will add the medical examiner's name to the National Registry of Certified Medical Examiners. The certification credential will expire 10 years after the date of its issuance.

[77 FR 24127, Apr. 20, 2012, as amended at 83 FR 26860, June 11, 2018]

§ 390.111 Requirements for continued listing on the National Registry of Certified Medical Examiners.

(a) To continue to be listed on the National Registry of Certified Medical Examiners, each medical examiner must:

(1) Continue to meet the requirements of §§ 390.103 through 390.115 and the applicable requirements of part 391 of this chapter.

(2) Report to FMCSA any changes in the registration information submitted under § 390.103(a)(2) within 30 days of the change.

(3) Continue to be licensed, certified, or registered, and authorized to perform physical examinations, in accordance with the applicable laws and regulations of each State in which the medical examiner performs examinations.

(4) Maintain documentation of State licensure, registration, or certification to perform physical examinations for each State in which the examiner performs examinations and maintain documentation of and completion of all training required by this section and § 390.105. The medical examiner must make this documentation available to an authorized representative of FMCSA or an authorized representative of Federal, State, or local government. The medical examiner must provide this documentation within 48 hours of the request for investigations and within 10 days of the request for regular audits of eligibility.

(5) Maintain medical examiner certification by completing training and testing according to the following schedule:

(i) No sooner than 4 years and no later than 5 years after the date of issuance of the medical examiner certification credential, complete periodic training as specified by FMCSA.

(ii) No sooner than 9 years and no later than 10 years after the date of issuance of the medical examiner certification credential:

(A) Complete periodic training as specified by FMCSA; and

(B) Pass the test required by § 390.103(a)(4).

(b) FMCSA will issue a new medical examiner certification credential valid for 10 years to a medical examiner who complies with paragraphs (a)(1) through (4) of this section and who successfully completes the training and testing as required by paragraphs (a)(5)(i) and (ii) of this section.

[77 FR 24127, Apr. 20, 2012, as amended at 83 FR 26860, June 11, 2018]

§ 390.113 Reasons for removal from the National Registry of Certified Medical Examiners.

FMCSA may remove a medical examiner from the National Registry of Certified Medical Examiners when a medical examiner fails to meet or maintain the qualifications established by

§§ 390.103 through 390.115, the requirements of other regulations applicable to the medical examiner, or otherwise does not meet the requirements of 49 U.S.C. 31149. The reasons for removal may include, but are not limited to:

(a) The medical examiner fails to comply with the requirements for continued listing on the National Registry of Certified Medical Examiners, as described in § 390.111.

(b) FMCSA finds that there are errors, omissions, or other indications of improper certification by the medical examiner of an operator in either the completed Medical Examination Reports or the medical examiner's certificates.

(c) The FMCSA determines the medical examiner issued a medical examiner's certificate to an operator of a commercial motor vehicle who failed to meet the applicable standards at the time of the examination.

(d) The medical examiner fails to comply with the examination requirements in § 391.43 of this chapter.

(e) The medical examiner falsely claims to have completed training in physical and medical examination standards as required by §§ 390.103 through 390.115.

[77 FR 24127, Apr. 20, 2012, as amended at 83 FR 26860, June 11, 2018]

§ 390.115 Procedure for removal from the National Registry of Certified Medical Examiners.

(a) *Voluntary removal.* To be voluntarily removed from the National Registry of Certified Medical Examiners, a medical examiner must submit a request to the FMCSA Director, Office of Carrier, Driver and Vehicle Safety Standards, 1200 New Jersey Ave. SE, Washington, DC 20590. On and after the date of issuance of a notice of proposed removal from the National Registry of Certified Medical Examiners, as described in paragraph (b) of this section, however, the Director, Office of Carrier, Driver and Vehicle Safety Standards will not approve the medical examiner's request for voluntary removal from the National Registry of Certified Medical Examiners.

(b) *Notice of proposed removal.* Except as provided by paragraphs (a) and (e) of

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this section, FMCSA initiates the process for removal of a medical examiner from the National Registry of Certified Medical Examiners by issuing a written notice of proposed removal to the medical examiner, stating the reasons that removal is proposed under § 390.113 and any corrective actions necessary for the medical examiner to remain listed on the National Registry of Certified Medical Examiners.

(c) *Response to notice of proposed removal and corrective action.* A medical examiner who has received a notice of proposed removal from the National Registry of Certified Medical Examiners must submit any written response to the Director, Office of Carrier, Driver and Vehicle Safety Standards no later than 30 days after the date of issuance of the notice of proposed removal. The response must indicate either that the medical examiner believes FMCSA has relied on erroneous reasons, in whole or in part, in proposing removal from the National Registry of Certified Medical Examiners, as described in paragraph (c)(1) of this section, or that the medical examiner will comply and take any corrective action specified in the notice of proposed removal, as described in paragraph (c)(2) of this section.

(1) *Opposing a notice of proposed removal.* If the medical examiner believes FMCSA has relied on an erroneous reason, in whole or in part, in proposing removal from the National Registry of Certified Medical Examiners, the medical examiner must explain the basis for his or her belief that FMCSA relied on an erroneous reason in proposing the removal. The Director, Office of Carrier, Driver and Vehicle Safety Standards will review the explanation.

(i) If the Director, Office of Carrier, Driver and Vehicle Safety Standards finds FMCSA has wholly relied on an erroneous reason for proposing removal from the National Registry of Certified Medical Examiners, the Director, Office of Carrier, Driver and Vehicle Safety Standards will withdraw the notice of proposed removal and notify the medical examiner in writing of the determination. If the Director, Office of Carrier, Driver and Vehicle Safety Standards finds FMCSA has partly relied on an erroneous reason for pro-

posing removal from the National Registry of Certified Medical Examiners, the Director, Office of Carrier, Driver and Vehicle Safety Standards will modify the notice of proposed removal and notify the medical examiner in writing of the determination. No later than 60 days after the date the Director, Office of Carrier, Driver and Vehicle Safety Standards modifies a notice of proposed removal, the medical examiner must comply with §§ 390.103 through 390.115 and correct any deficiencies identified in the modified notice of proposed removal as described in paragraph (c)(2) of this section.

(ii) If the Director, Office of Carrier, Driver and Vehicle Safety Standards finds FMCSA has not relied on an erroneous reason in proposing removal, the Director, Office of Carrier, Driver and Vehicle Safety Standards will affirm the notice of proposed removal and notify the medical examiner in writing of the determination. No later than 60 days after the date the Director, Office of Carrier, Driver and Vehicle Safety Standards affirms the notice of proposed removal, the medical examiner must comply with §§ 390.103 through 390.115 and correct the deficiencies identified in the notice of proposed removal as described in paragraph (c)(2) of this section.

(iii) If the medical examiner does not submit a written response within 30 days of the date of issuance of a notice of proposed removal, the removal becomes effective and the medical examiner is immediately removed from the National Registry of Certified Medical Examiners.

(2) *Compliance and corrective action.* (i) The medical examiner must comply with §§ 390.103 through 390.115 and complete the corrective actions specified in the notice of proposed removal no later than 60 days after either the date of issuance of the notice of proposed removal or the date the Director, Office of Carrier, Driver and Vehicle Safety Standards affirms or modifies the notice of proposed removal, whichever is later. The medical examiner must provide documentation of compliance and completion of the corrective actions to the Director, Office of Carrier, Driver

and Vehicle Safety Standards. The Director, Office of Carrier, Driver and Vehicle Safety Standards may conduct any investigations and request any documentation necessary to verify that the medical examiner has complied with §§ 390.103 through 390.115 and completed the required corrective action(s). The Director, Office of Carrier, Driver and Vehicle Safety Standards will notify the medical examiner in writing whether he or she has met the requirements to continue to be listed on the National Registry of Certified Medical Examiners.

(ii) If the medical examiner fails to complete the proposed corrective action(s) within the 60-day period, the removal becomes effective and the medical examiner is immediately removed from the National Registry of Certified Medical Examiners. The Director, Office of Carrier, Driver and Vehicle Safety Standards will notify the person in writing that he or she has been removed from the National Registry of Certified Medical Examiners.

(3) At any time before a notice of proposed removal from the National Registry of Certified Medical Examiners becomes final, the recipient of the notice of proposed removal and the Director, Office of Carrier, Driver and Vehicle Safety Standards may resolve the matter by mutual agreement.

(d) *Request for administrative review.* If a person has been removed from the National Registry of Certified Medical Examiners under paragraph (c)(1)(iii), (c)(2)(ii), or (e) of this section, that person may request an administrative review no later than 30 days after the date the removal becomes effective. The request must be submitted in writing to the FMCSA Associate Administrator for Policy, 1200 New Jersey Ave. SE, Washington, DC 20590. The request must explain the error(s) committed in removing the medical examiner from the National Registry of Certified Medical Examiners, and include a list of all factual, legal, and procedural issues in dispute, and any supporting information or documents.

(1) *Additional procedures for administrative review.* The Associate Administrator may ask the person to submit additional data or attend a conference to discuss the removal. If the person

does not provide the information requested, or does not attend the scheduled conference, the Associate Administrator may dismiss the request for administrative review.

(2) *Decision on administrative review.* The Associate Administrator will complete the administrative review and notify the person in writing of the decision. The decision constitutes final Agency action. If the Associate Administrator decides the removal was not valid, FMCSA will reinstate the person and reissue a certification credential to expire on the expiration date of the certificate that was invalidated under paragraph (g) of this section. The reinstated medical examiner must:

(i) Continue to meet the requirements of §§ 390.103 through 390.115 and the applicable requirements of part 391 of this chapter.

(ii) Report to FMCSA any changes in the registration information submitted under § 390.103(a)(2) within 30 days of the reinstatement.

(iii) Be licensed, certified, or registered in accordance with applicable State laws and regulations to perform physical examinations.

(iv) Maintain documentation of State licensure, registration, or certification to perform physical examinations for each State in which the examiner performs examinations and maintains documentation of completion of all training required by §§ 390.105 and 390.111 of this part. The medical examiner must also make this documentation available to an authorized representative of FMCSA or an authorized representative of Federal, State, or local government. The medical examiner must provide this documentation within 48 hours of the request for investigations and within 10 days of the request for regular audits of eligibility.

(v) Complete periodic training as required by the Director, Office of Carrier, Driver and Vehicle Safety Standards.

(e) *Emergency removal.* In cases of either willfulness or in which public health, interest, or safety requires, the provisions of paragraph (b) of this section are not applicable and the Director, Office of Carrier, Driver and Vehicle Safety Standards may immediately remove a medical examiner from the

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National Registry of Certified Medical Examiners and invalidate the certification credential issued under § 390.109. A person who has been removed under the provisions of this paragraph may request an administrative review of that decision as described under paragraph (d) of this section.

(f) *Reinstatement on the National Registry of Certified Medical Examiners.* No sooner than 30 days after the date of removal from the National Registry of Certified Medical Examiners, a person who has been voluntarily or involuntarily removed may apply to the Director, Office of Carrier, Driver and Vehicle Safety Standards to be reinstated. The person must:

(1) Continue to meet the requirements of §§ 390.103 through 390.115 and the applicable requirements of part 391 of this chapter.

(2) Report to FMCSA any changes in the registration information submitted under § 390.103(a)(2).

(3) Be licensed, certified, or registered in accordance with applicable State laws and regulations to perform physical examinations.

(4) Maintain documentation of State licensure, registration, or certification to perform physical examinations for each State in which the person performs examinations and maintains documentation of completion of all training required by §§ 390.105 and 390.111. The medical examiner must also make this documentation available to an authorized representative of FMCSA or an authorized representative of Federal, State, or local government. The person must provide this documentation within 48 hours of the request for investigations and within 10 days of the request for regular audits of eligibility.

(5) Complete training and testing as required by the Director, Office of Carrier, Driver and Vehicle Safety Standards.

(6) In the case of a person who has been involuntarily removed, provide documentation showing completion of any corrective actions required in the notice of proposed removal.

(g) *Effect of final decision by FMCSA.* If a person is removed from the National Registry of Certified Medical Examiners under paragraph (c) or (e) of

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this section, the certification credential issued under § 390.109 is no longer valid. However, the removed person's information remains publicly available for 3 years, with an indication that the person is no longer listed on the National Registry of Certified Medical Examiners as of the date of removal.

[77 FR 24127, Apr. 20, 2012, as amended at 80 FR 59074, Oct. 1, 2015; 83 FR 22878, May 17, 2018; 83 FR 26860, June 11, 2018]

MEDICAL EXAMINER CERTIFICATION REQUIREMENTS FOR QUALIFIED DEPARTMENT OF VETERANS AFFAIRS EXAMINERS

SOURCE: 83 FR 26861, June 11, 2018, unless otherwise noted.

§ 390.123 Medical examiner certification for qualified Department of Veterans Affairs examiners.

(a) For a qualified VA examiner to receive medical examiner certification from FMCSA under §§ 390.123 through 390.135, a person must:

(1) Be an advanced practice nurse, doctor of chiropractic, doctor of medicine, doctor of osteopathy, physician assistant, or other medical professional employed in the Department of Veterans Affairs;

(2) Be licensed, certified, or registered in a State to perform physical examinations;

(3) Register on the National Registry website and receive a National Registry number before taking the training that meets the requirements of § 390.125;

(4) Be familiar with FMCSA's standards for, and physical requirements of, a commercial motor vehicle operator requiring medical certification, by completing the training program that meets the requirements of § 390.125;

(5) Pass the medical examiner certification test provided by FMCSA, administered in accordance with § 390.127, and has had his or her test information forwarded to FMCSA; and

(6) Never have been found to have acted fraudulently with respect to any certification of a commercial motor vehicle operator, including by fraudulently awarding a medical certificate.

(b) If a person becomes a certified VA medical examiner under §§ 390.123

through 390.135, then to renew such certification the certified VA medical examiner must remain qualified under paragraphs (a)(1) and (2) of this section and complete additional testing and training as required by § 390.131(a)(5).

§ 390.125 Qualified VA examiner certification training.

A qualified VA examiner applying for certification under §§ 390.123 through 390.135 must complete training developed and provided by FMCSA and delivered through a web-based training system operated by the Department of Veterans Affairs.

§ 390.127 Qualified VA examiner certification testing.

To receive medical examiner certification from FMCSA under §§ 390.123 through 390.135, a qualified VA examiner must pass the medical examiner certification test developed and provided by FMCSA and administered through a web-based system operated by the Department of Veterans Affairs.

§ 390.129 Issuance of the FMCSA medical examiner certification credential.

Upon compliance with the requirements of § 390.123(a) or (b), FMCSA will issue to a qualified VA examiner or certified VA medical examiner, as applicable, an FMCSA medical examiner certification credential and will add the certified VA medical examiner's name to the National Registry of Certified Medical Examiners. The certification credential will expire 10 years after the date of its issuance.

§ 390.131 Requirements for continued listing of a certified VA medical examiner on the National Registry of Certified Medical Examiners.

(a) To continue to be listed on the National Registry of Certified Medical Examiners, each certified VA medical examiner must:

(1) Continue to meet the requirements of §§ 390.123 through 390.135 and the applicable requirements of part 391 of this chapter.

(2) Report to FMCSA any changes in the registration information submitted under § 390.123(a)(3) within 30 days of the change.

(3) Continue to be licensed, certified, or registered, and authorized to perform physical examinations, in accordance with the laws and regulations of a State.

(4) Maintain documentation of licensure, registration, or certification in a State to perform physical examinations and maintain documentation of and completion of all training required by this section and § 390.125. The certified VA medical examiner must make this documentation available to an authorized representative of FMCSA or an authorized representative of Federal, State, or local government. The certified VA medical examiner must provide this documentation within 48 hours of the request for investigations and within 10 days of the request for regular audits of eligibility.

(5) Maintain medical examiner certification by completing training and testing according to the following schedule:

(i) No sooner than 4 years and no later than 5 years after the date of issuance of the medical examiner certification credential, complete periodic training as specified by FMCSA.

(ii) No sooner than 9 years and no later than 10 years after the date of issuance of the medical examiner certification credential:

(A) Complete periodic training as specified by FMCSA; and

(B) Pass the test required by § 390.123(a)(5).

(b) FMCSA will issue a new medical examiner certification credential valid for 10 years to a certified VA medical examiner who complies with paragraphs (a)(1) through (4) of this section and who successfully completes the training and testing as required by paragraphs (a)(5)(i) and (ii) of this section.

(c) A certified VA medical examiner must report to FMCSA within 30 days that he or she is no longer employed in the Department of Veterans Affairs. Any certified VA medical examiner who is no longer employed in the Department of Veterans Affairs, but would like to remain listed on the National Registry, must, within 30 days of leaving employment in the Department of Veterans Affairs, meet the requirements of § 390.111. In particular, he or

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she must be licensed, certified, or registered, and authorized to perform physical examinations, in accordance with the applicable laws and regulations of each State in which the medical examiner performs examinations. The previously certified VA medical examiner's medical license(s) must be verified and accepted by FMCSA prior to conducting any physical examination of a commercial motor vehicle operator or issuing any medical examiner's certificates.

§ 390.133 Reasons for removal of a certified VA medical examiner from the National Registry of Certified Medical Examiners.

FMCSA may remove a certified VA medical examiner from the National Registry of Certified Medical Examiners when a certified VA medical examiner fails to meet or maintain the qualifications established by §§ 390.123 through 390.135, the requirements of other regulations applicable to the certified VA medical examiner, or otherwise does not meet the requirements of 49 U.S.C. 31149. The reasons for removal may include, but are not limited to:

(a) The certified VA medical examiner fails to comply with the requirements for continued listing on the National Registry of Certified Medical Examiners, as described in § 390.131.

(b) FMCSA finds that there are errors, omissions, or other indications of improper certification by the certified VA medical examiner of an operator in either the completed Medical Examination Reports or the medical examiner's certificates.

(c) The FMCSA determines the certified VA medical examiner issued a medical examiner's certificate to an operator of a commercial motor vehicle who failed to meet the applicable standards at the time of the examination.

(d) The certified VA medical examiner fails to comply with the examination requirements in § 391.43 of this chapter.

(e) The certified VA medical examiner falsely claims to have completed training in physical and medical examination standards as required by §§ 390.123 through 390.135.

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§ 390.135 Procedure for removal of a certified VA medical examiner from the National Registry of Certified Medical Examiners.

(a) *Voluntary removal.* To be voluntarily removed from the National Registry of Certified Medical Examiners, a certified VA medical examiner must submit a request to the FMCSA Director, Office of Carrier, Driver and Vehicle Safety Standards, 1200 New Jersey Ave. SE, Washington, DC 20590. Except as provided in paragraph (b) of this section, the Director, Office of Carrier, Driver and Vehicle Safety Standards will accept the request and the removal will become effective immediately. On and after the date of issuance of a notice of proposed removal from the National Registry of Certified Medical Examiners, as described in paragraph (b) of this section, however, the Director, Office of Carrier, Driver and Vehicle Safety Standards will not approve the certified VA medical examiner's request for voluntary removal from the National Registry of Certified Medical Examiners.

(b) *Notice of proposed removal.* Except as provided by paragraphs (a) and (e) of this section, FMCSA initiates the process for removal of a certified VA medical examiner from the National Registry of Certified Medical Examiners by issuing a written notice of proposed removal to the certified VA medical examiner, stating the reasons that removal is proposed under § 390.133 and any corrective actions necessary for the certified VA medical examiner to remain listed on the National Registry of Certified Medical Examiners.

(c) *Response to notice of proposed removal and corrective action.* A certified VA medical examiner who has received a notice of proposed removal from the National Registry of Certified Medical Examiners must submit any written response to the Director, Office of Carrier, Driver and Vehicle Safety Standards no later than 30 days after the date of issuance of the notice of proposed removal. The response must indicate either that the certified VA medical examiner believes FMCSA has relied on erroneous reasons, in whole or in part, in proposing removal from the National Registry of Certified Medical Examiners, as described in paragraph

(c)(1) of this section, or that the certified VA medical examiner will comply and take any corrective action specified in the notice of proposed removal, as described in paragraph (c)(2) of this section.

(1) *Opposing a notice of proposed removal.* If the certified VA medical examiner believes FMCSA has relied on an erroneous reason, in whole or in part, in proposing removal from the National Registry of Certified Medical Examiners, the certified VA medical examiner must explain the basis for his or her belief that FMCSA relied on an erroneous reason in proposing the removal. The Director, Office of Carrier, Driver and Vehicle Safety Standards will review the explanation.

(i) If the Director, Office of Carrier, Driver and Vehicle Safety Standards finds FMCSA has wholly relied on an erroneous reason for proposing removal from the National Registry of Certified Medical Examiners, the Director, Office of Carrier, Driver and Vehicle Safety Standards will withdraw the notice of proposed removal and notify the certified VA medical examiner in writing of the determination. If the Director, Office of Carrier, Driver and Vehicle Safety Standards finds FMCSA has partly relied on an erroneous reason for proposing removal from the National Registry of Certified Medical Examiners, the Director, Office of Carrier, Driver and Vehicle Safety Standards will modify the notice of proposed removal and notify the certified VA medical examiner in writing of the determination. No later than 60 days after the date the Director, Office of Carrier, Driver and Vehicle Safety Standards modifies a notice of proposed removal, the certified VA medical examiner must comply with §§390.123 through 390.135 and correct any deficiencies identified in the modified notice of proposed removal as described in paragraph (c)(2) of this section.

(ii) If the Director, Office of Carrier, Driver and Vehicle Safety Standards finds FMCSA has not relied on an erroneous reason in proposing removal, the Director, Office of Carrier, Driver and Vehicle Safety Standards will affirm the notice of proposed removal and notify the certified VA medical examiner

in writing of the determination. No later than 60 days after the date the Director, Office of Carrier, Driver and Vehicle Safety Standards affirms the notice of proposed removal, the certified VA medical examiner must comply with §§390.123 through 390.135 and correct the deficiencies identified in the notice of proposed removal as described in paragraph (c)(2) of this section.

(iii) If the certified VA medical examiner does not submit a written response within 30 days of the date of issuance of a notice of proposed removal, the removal becomes effective and the certified VA medical examiner is immediately removed from the National Registry of Certified Medical Examiners.

(2) *Compliance and corrective action.* (i) The certified VA medical examiner must comply with §§390.123 through 390.135 and complete the corrective actions specified in the notice of proposed removal no later than 60 days after either the date of issuance of the notice of proposed removal or the date the Director, Office of Carrier, Driver and Vehicle Safety Standards affirms or modifies the notice of proposed removal, whichever is later. The certified VA medical examiner must provide documentation of compliance and completion of the corrective actions to the Director, Office of Carrier, Driver and Vehicle Safety Standards. The Director, Office of Carrier, Driver and Vehicle Safety Standards may conduct any investigations and request any documentation necessary to verify that the certified VA medical examiner has complied with §§390.123 through 390.135 and completed the required corrective action(s). The Director, Office of Carrier, Driver and Vehicle Safety Standards will notify the certified VA medical examiner in writing whether he or she has met the requirements to continue to be listed on the National Registry of Certified Medical Examiners.

(ii) If the certified VA medical examiner fails to complete the proposed corrective action(s) within the 60-day period, the removal becomes effective and the certified VA medical examiner is immediately removed from the National Registry of Certified Medical

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Examiners. The Director, Office of Carrier, Driver and Vehicle Safety Standards will notify the person in writing that he or she has been removed from the National Registry of Certified Medical Examiners.

(3) At any time before a notice of proposed removal from the National Registry of Certified Medical Examiners becomes final, the recipient of the notice of proposed removal and the Director, Office of Carrier, Driver and Vehicle Safety Standards may resolve the matter by mutual agreement.

(d) *Request for administrative review.* If a person has been removed from the National Registry of Certified Medical Examiners under paragraph (c)(1)(iii), (c)(2)(ii), or (e) of this section, that person may request an administrative review no later than 30 days after the date the removal becomes effective. The request must be submitted in writing to the FMCSA Associate Administrator for Policy, 1200 New Jersey Ave. SE, Washington, DC 20590. The request must explain the error(s) committed in removing the certified VA medical examiner from the National Registry of Certified Medical Examiners, and include a list of all factual, legal, and procedural issues in dispute, and any supporting information or documents.

(1) *Additional procedures for administrative review.* The Associate Administrator may ask the person to submit additional data or attend a conference to discuss the removal. If the person does not provide the information requested, or does not attend the scheduled conference, the Associate Administrator may dismiss the request for administrative review.

(2) *Decision on administrative review.* The Associate Administrator will complete the administrative review and notify the person in writing of the decision. The decision constitutes final Agency action. If the Associate Administrator decides the removal was not valid, FMCSA will reinstate the person and reissue a certification credential to expire on the expiration date of the certificate that was invalidated under paragraph (g) of this section. The reinstated certified VA medical examiner must:

(i) Continue to meet the requirements of §§ 390.123 through 390.135 and

the applicable requirements of part 391 of this chapter.

(ii) Report to FMCSA any changes in the registration information submitted under § 390.123(a)(3) within 30 days of the reinstatement.

(iii) Be licensed, certified, or registered in accordance with applicable State laws and regulations to perform physical examinations.

(iv) Maintain documentation of licensure, registration, or certification in a State to perform physical examinations and maintain documentation of and completion of all training required by §§ 390.125 and 390.131 of this part. The certified VA medical examiner must make this documentation available to an authorized representative of FMCSA or an authorized representative of Federal, State, or local government. The certified VA medical examiner must provide this documentation within 48 hours of the request for investigations and within 10 days of the request for regular audits of eligibility.

(v) Complete periodic training as required by the Director, Office of Carrier, Driver and Vehicle Safety Standards.

(e) *Emergency removal.* In cases of either willfulness or in which public health, interest, or safety requires, the provisions of paragraph (b) of this section are not applicable and the Director, Office of Carrier, Driver and Vehicle Safety Standards may immediately remove a certified VA medical examiner from the National Registry of Certified Medical Examiners and invalidate the certification credential issued under § 390.129. A person who has been removed under the provisions of this paragraph may request an administrative review of that decision as described under paragraph (d) of this section.

(f) *Reinstatement on the National Registry of Certified Medical Examiners.* No sooner than 30 days after the date of removal from the National Registry of Certified Medical Examiners, a person who has been voluntarily or involuntarily removed may apply to the Director, Office of Carrier, Driver and Vehicle Safety Standards to be reinstated. The person must:

(1) Continue to meet the requirements of §§ 390.123 through 390.135 and

the applicable requirements of part 391 of this chapter.

(2) Report to FMCSA any changes in the registration information submitted under § 390.123(a)(3).

(3) Be licensed, certified, or registered in accordance with applicable State laws and regulations to perform physical examinations.

(4) Maintain documentation of licensure, registration, or certification in a State to perform physical examinations and maintain documentation of and completion of all training required by §§ 390.125 and 390.131. The certified VA medical examiner must make this documentation available to an authorized representative of FMCSA or an authorized representative of Federal, State, or local government. The certified VA medical examiner must provide this documentation within 48 hours of the request for investigations and within 10 days of the request for regular audits of eligibility.

(5) Complete training and testing as required by the Director, Office of Carrier, Driver and Vehicle Safety Standards.

(6) In the case of a person who has been involuntarily removed, provide documentation showing completion of any corrective actions required in the notice of proposed removal.

(g) *Effect of final decision by FMCSA.* If a person is removed from the National Registry of Certified Medical Examiners under paragraph (c) or (e) of this section, the certification credential issued under § 390.129 is no longer valid. However, the removed person's information remains publicly available for 3 years, with an indication that the person is no longer listed on the National Registry of Certified Medical Examiners as of the date of removal.

Subpart E—Unified Registration System

SOURCE: 80 FR 63712, Oct. 21, 2015, unless otherwise noted.

EFFECTIVE DATE NOTE: At 82 FR 5318, Jan. 17, 2017, subpart E (§§ 390.201–390.209) was suspended, effective Jan. 14, 2017.

§ 390.201 USDOT Registration.

(a) *Purpose.* This section establishes who must register with FMCSA under

the Unified Registration System, the filing schedule, and general information pertaining to persons subject to the Unified Registration System registration requirements.

(b) *Applicability.* (1) Except as provided in paragraph (g) of this section, each motor carrier (including a private motor carrier, an exempt for-hire motor carrier, a non-exempt for-hire motor carrier, and a motor carrier of passengers that participates in a through ticketing arrangement with one or more interstate for-hire motor carriers of passengers), intermodal equipment provider, broker and freight forwarder subject to the requirements of this subchapter must file Form MCSA–1, the URS online application, with FMCSA to:

(i) Identify its operations with the Federal Motor Carrier Safety Administration for safety oversight, as applicable;

(ii) Obtain operating authority required under 49 U.S.C. chapter 139, as applicable; and

(iii) Obtain a hazardous materials safety permit as required under 49 U.S.C. 5109, as applicable.

(2) A cargo tank and cargo tank motor vehicle manufacturer, assembler, repairer, inspector, tester, and design certifying engineer that is subject to registration requirements under 49 CFR 107.502 and 49 U.S.C. 5108 must satisfy those requirements by electronically filing Form MCSA–1, the URS online application, with FMCSA.

(c) *General.* (1)(i) A person that fails to file Form MCSA–1, the URS online application, pursuant to paragraph (d)(1) of this section is subject to the penalties prescribed in 49 U.S.C. 521(b)(2)(B) or 49 U.S.C. 14901(a), as appropriate.

(ii) A person that fails to complete biennial updates to the information pursuant to paragraph (d)(2) of this section is subject to the penalties prescribed in 49 U.S.C. 521(b)(2)(B) or 49 U.S.C. 14901(a), as appropriate, and deactivation of its USDOT Number.

(iii) A person that furnishes misleading information or makes false statements upon Form MCSA–1, the URS online application, is subject to the penalties prescribed in 49 U.S.C.

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521(b)(2)(B), 49 U.S.C. 14901(a) or 49 U.S.C. 14907, as appropriate.

(2) Upon receipt and processing of Form MCSA-1, the URS online application, FMCSA will issue the applicant an inactive identification number (USDOT Number). FMCSA will activate the USDOT Number after completion of applicable administrative filings pursuant to §390.205(a), unless the applicant is subject to §390.205(b). An applicant may not begin operations nor mark a commercial motor vehicle with the USDOT Number until after the date of the Agency’s written notice that the USDOT Number has been activated.

(3) The motor carrier must display a valid USDOT Number on each self-propelled CMV, as defined in §390.5, along with the additional information required by §390.21.

(d) *Filing schedule.* Each person listed under §390.201(b) must electronically file Form MCSA-1, the URS online application, at the following times:

(1) Before it begins operations; and

(2) Every 24 months as prescribed in paragraph (d)(3) of this section.

(3)(i) Persons assigned a USDOT Number must file an updated Form MCSA-1, the URS online application, every 24 months, according to the following schedule:

USDOT No. ending in . . .	Must file by last day of . . .
1	January.
2	February.
3	March.
4	April.
5	May.
6	June.
7	July.
8	August.
9	September.
0	October.

(ii) If the next-to-last digit of its USDOT Number is odd, the person must file its update in every odd-numbered calendar year. If the next-to-last digit of the USDOT Number is even, the person must file its update in every even-numbered calendar year.

(4) *When there is a change in legal name, form of business, or address.* A registered entity must notify the Agency of a change in legal name, form of business, or address within 30 days of the change by filing an updated Form

MCSA-1, the URS online application, reflecting the revised information. Notification of a change in legal name, form of business, or address does not relieve a registered entity from the requirement to file an updated Form MCSA-1 every 24 months in accordance with paragraph (d)(3) of this section.

(5) *When there is a transfer of operating authority.* (i) Both a person who obtains operating authority through a transfer, as defined in part 365, subpart D of this subchapter (transferee), and the person transferring its operating authority (transferor), must each notify the Agency of the transfer within 30 days of consummation of the transfer by filing:

(A) An updated Form MCSA-1, the URS online application, for the transferor, and for the transferee, if the transferee had an existing USDOT Number at the time of the transfer; or

(B) A new Form MCSA-1, the URS online application, if the transferee did not have an existing USDOT Number at the time of the transfer.

(C) A copy of the operating authority that is being transferred.

(ii) Notification of a transfer of operating authority does not relieve a registered entity from the requirement to file an updated Form MCSA-1, the URS online application, every 24 months in accordance with paragraph (d)(3) of this section.

(e) *Availability of form.* Form MCSA-1, the URS online application is available, including complete instructions, from the FMCSA Web site at <http://www.fmcsa.dot.gov/urs>.

(f) *Where to file.* Persons subject to the registration requirements under this subpart must electronically file Form MCSA-1, the URS online application, on the FMCSA Web site at <http://www.fmcsa.dot.gov/urs>.

(g) *Exception.* The rules in this subpart do not govern the application by a Mexico-domiciled motor carrier to provide transportation of property or passengers in interstate commerce between Mexico and points in the United States beyond the municipalities and commercial zones along the United States-Mexico international border. The applicable procedures governing transportation by Mexico-domiciled motor carriers are provided in §390.19.

§ 390.203 PRISM State registration/biennial updates.

(a) A motor carrier that registers its vehicles in a State that participates in the Performance and Registration Information Systems Management (PRISM) program (authorized under section 4004 of the Transportation Equity Act for the 21st Century [Public Law 105-178, 112 Stat. 107]) alternatively may satisfy the requirements set forth in §390.201 by electronically filing all the required USDOT registration and biennial update information with the State according to its policies and procedures, provided the State has integrated the USDOT registration/update capability into its vehicle registration program.

(b) If the State procedures do not allow a motor carrier to file the Form MCSA-1, the URS online application, or to submit updates within the period specified in §390.201(d)(2), a motor carrier must complete such filings directly with FMCSA.

(c) A for-hire motor carrier, unless providing transportation exempt from the commercial registration requirements of 49 U.S.C. chapter 139, must obtain operating authority as prescribed under §390.201(b) and part 365 of this subchapter before operating in interstate commerce.

§ 390.205 Special requirements for registration.

(a)(1) *General.* A person applying to operate as a motor carrier, broker, or freight forwarder under this subpart must make the additional filings described in paragraphs (a)(2) and (a)(3) of this section as a condition for registration under this subpart within 90 days of the date on which the application is filed:

(2) Evidence of financial responsibility.

(i) A person that registers to conduct operations in interstate commerce as a for-hire motor carrier, a broker, or a freight forwarder must file evidence of financial responsibility as required under part 387, subparts C and D of this subchapter.

(ii) A person that registers to transport hazardous materials as defined in 49 CFR 171.8 (or any quantity of a material listed as a select agent or toxin in 42 CFR part 73) in interstate com-

merce must file evidence of financial responsibility as required under part 387, subpart C of this subchapter.

(3) *Designation of agent for service of process.* All motor carriers (both private and for-hire), brokers and freight forwarders required to register under this subpart must designate an agent for service of process (a person upon whom court or Agency process may be served) following the rules in part 366 of this subchapter:

(b) If an application is subject to a protest period, the Agency will not activate a USDOT Number until expiration of the protest period provided in §365.115 of this subchapter or—if a protest is received—after FMCSA denies or rejects the protest, as applicable.

§ 390.207 Other governing regulations.

(a) *Motor carriers.* (1) A motor carrier granted registration under this part must successfully complete the applicable New Entrant Safety Assurance Program as described in paragraphs (a)(1)(i) through (a)(1)(iii) of this section as a condition for permanent registration:

(i) A U.S.- or Canada-domiciled motor carrier is subject to the new entrant safety assurance program under part 385, subpart D, of this subchapter.

(ii) A Mexico-domiciled motor carrier is subject to the safety monitoring program under part 385, subpart B of this subchapter.

(iii) A Non-North America-domiciled motor carrier is subject to the safety monitoring program under part 385, subpart I of this subchapter.

(2) Only the legal name or a single trade name of the motor carrier may be used on the Form MCSA-1, the URS online application.

(b) *Brokers, freight forwarders and non-exempt for-hire motor carriers.* (1) A broker or freight forwarder must obtain operating authority pursuant to part 365 of this chapter as a condition for obtaining USDOT Registration.

(2) A motor carrier registering to engage in transportation that is not exempt from economic regulation by FMCSA must obtain operating authority pursuant to part 365 of this subchapter as a condition for obtaining USDOT Registration.

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(c) *Intermodal equipment providers.* An intermodal equipment provider is subject to the requirements of subpart C of this part.

(1) Only the legal name or a single trade name of the intermodal equipment provider may be used on the Form MCSA-1, the URS online application.

(2) The intermodal equipment provider must identify each unit of interchanged intermodal equipment by its assigned USDOT Number.

(d) *Hazardous materials safety permit applicants.* A person who applies for a hazardous materials safety permit is subject to the requirements of part 385, subpart E, of this subchapter.

(e) *Cargo tank facilities.* A cargo tank facility is subject to the requirements of 49 CFR part 107, subpart F, 49 CFR part 172, subpart H, and 49 CFR part 180.

§ 390.209 Pre-authorization safety audit.

A non-North America-domiciled motor carrier seeking to provide transportation of property or passengers in interstate commerce within the United States must pass the pre-authorization safety audit under §385.607(c) of this subchapter as a condition for receiving registration under this part.

Subpart E—URS Online Application

§ 390.200T USDOT Registration.

(a) *Purpose.* This section establishes who must register with FMCSA using the Form MCSA-1, the URS online application, beginning January 14, 2017.

(b) *Applicability.* Notwithstanding any other provisions of this part or 49 CFR 385.305T(b)(2), a new applicant private motor carrier or new applicant exempt for-hire motor carrier subject to the requirements of this subchapter must file Form MCSA-1 with FMCSA to identify its operations with the Federal Motor Carrier Safety Administration for safety oversight. Form MCSA-1 is the URS online application, and both the application and its instructions are available from the FMCSA Web site at <http://www.fmcsa.dot.gov/urs>.

(c) *Definition.* For purposes of this section, a “new applicant” is an entity applying for operating authority reg-

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istration and a USDOT number who does not at the time of application have an active registration or USDOT, Motor Carrier (MC), Mexican owned or controlled (MX), or Freight Forwarder (FF) number, and who has never had an active registration or USDOT, MC, MX, or FF number.

[82 FR 5318, Jan. 17, 2017]

Subpart F [Reserved]

Subpart G—Lease and Interchange of Passenger-Carrying Commercial Motor Vehicles

SOURCE: 84 FR 40295, Aug. 14, 2019, unless otherwise noted.

§ 390.401 Applicability.

(a) *General.* Beginning on January 1, 2021, and except as provided in paragraphs (b)(1) and (2) of this section, this subpart applies to the following actions, irrespective of duration, or the presence or absence of compensation, by motor carriers operating commercial motor vehicles to transport passengers:

(1) The lease of passenger-carrying commercial motor vehicles; and

(2) The interchange of passenger-carrying commercial motor vehicles between motor carriers.

(b) *Exceptions—(1) Contracts and agreements between motor carriers of passengers with active passenger carrier operating authority registrations.* This subpart does not apply to contracts and agreements between motor carriers of passengers that have active passenger carrier operating authority registrations with the Federal Motor Carrier Safety Administration when one such motor carrier acquires transportation service(s) from another such motor carrier(s).

(2) *Financial leases.* This subpart does not apply to a contract (however designated, *e.g.*, lease, closed-end lease, hire purchase, lease purchase, purchase agreement, installment plan, demonstration or loaner vehicle, etc.) between a motor carrier and a bank or similar financial organization or a manufacturer or dealer of passenger-

carrying commercial motor vehicles allowing the motor carrier to use the passenger-carrying commercial motor vehicle.

(c) *Penalties.* If the use of a passenger-carrying commercial motor vehicle is conferred on one motor carrier subject to this subpart by another such motor carrier without a lease or interchange agreement, or pursuant to a lease or interchange agreement that fails to meet all applicable requirements of subpart G, both motor carriers shall be subject to a civil penalty.

§ 390.403 Lease and interchange requirements.

Beginning on January 1, 2021, and except as provided in § 390.401(b) of this section, a motor carrier may transport passengers in a leased or interchanged commercial motor vehicle only under the following conditions:

(a) *In general*—(1) *Lease or agreement required.* There shall be in effect either:

(i) A lease granting the use of the passenger-carrying commercial motor vehicle and meeting the conditions of paragraphs (b) and (c) of this section. The provisions of the lease shall be adhered to and performed by the lessee; or

(ii) An agreement meeting the conditions of paragraphs (b) and (c) of this section and governing the interchange of passenger-carrying commercial motor vehicles between motor carriers of passengers conducting service on a route or series of routes. The provisions of the interchange agreement shall be adhered to and performed by the lessee.

(2) *Exception.* When an event occurs (*e.g.*, a crash, the vehicle is disabled) that requires a motor carrier of passengers immediately to obtain a replacement vehicle from another motor carrier of passengers, the two carriers may postpone the writing of the lease or written agreement for the replacement vehicle for up to 48 hours after the time the lessee takes exclusive possession and control of the replacement vehicle. However, during that 48-hour period, until the lease or agreement is written and provided to the driver, the driver must carry, and produce upon demand of an enforcement official, a document signed and dated by the les-

see's driver or available company official stating: “[Carrier A, USDOT number, telephone number] has leased this vehicle to [Carrier B, USDOT number, telephone number] pursuant to 49 CFR 390.403(a)(2).”

(b) *Contents of the lease.* The lease or interchange agreement required by paragraph (a) of this section shall contain:

(1) *Vehicle identification information.* The name of the vehicle manufacturer, the year of manufacture, and at least the last 6 digits of the Vehicle Identification Number (VIN) of each passenger-carrying commercial motor vehicle transferred between motor carriers pursuant to the lease or interchange agreement.

(2) *Parties.* The legal name, USDOT number, and telephone number of the motor carrier providing passenger transportation in a commercial motor vehicle (lessee) and the legal name, USDOT number, and telephone number of the motor carrier providing the equipment (lessor), and signatures of both parties or their authorized representatives.

(3) *Specific duration.* The time and date when, and the location where, the lease or interchange agreement begins and ends.

(4) *Exclusive possession and responsibilities.* (i) A clear statement that the motor carrier obtaining the passenger-carrying commercial motor vehicle (the lessee) has exclusive possession, control, and use of the passenger-carrying commercial motor vehicle for the duration of the agreement, and assumes complete responsibility for operation of the vehicle and compliance with all applicable Federal regulations for the duration of the agreement.

(ii) In the event of a sublease between motor carriers, all of the requirements of this section shall apply to a sublease.

(c) *Copies of the lease.* A copy shall be on the passenger-carrying commercial motor vehicle during the period of the lease or interchange agreement, and both the lessee and lessor shall retain a copy of the lease or interchange agreement for 1 year after the expiration date.